22 September 1975
ENGLISH AND SPANISH
ONLY

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

CONTROL OF RESTRICTIVE BUSINESS PRACTICES IN LATIN AMERICA

Addendum

Laws and regulations in force in Latin America
relating to the control of restrictive
business practices

HARVARD COLLEGE LIBRARY
DEPOSITED BY THE
UNITED NATIONS
NOV 21 1975

UNCTAD/ST/MD/4/Add.1
GE.75-49244

CONTENTS

Page

I. LAWS AND REGULATIONS CONCERNING PRACTICES RESTRICTING COMPETITION AND CONCERNING ABUSE OF ECONOMIC POWER 1

(i) **Argentina**: Law No. 12,906 of 30 December 1946. Suppression of speculation and monopolies (Trusts) 2

(ii) **Brazil**: Decree No. 52,025 of 20 May 1963. Regulations giving effect to Law No. 4,137 of 10 September 1962 concerning the suppression of abuses of economic power 9

(iii) **Colombia**: Law No. 155 of 24 December 1959 setting forth a number of provisions concerning restrictive business practices 37

Decree No. 1,302 of 10 June 1964 regulating Law No. 155 41

(iv) **Chile**: Legislative Decree No. 211 of 17 September 1973 establishing regulations for the protection of free competition 46

(v) **Mexico**: Organic Law implementing article 28 of the constitution concerning monopolies 58

II. EXTRACTS FROM LAWS AND REGULATIONS ON CONTROL OF ECONOMIC POWER BY CONTROL OF PRICES 63

(i) **Argentina**: Law No. 19,508 of 23 February 1972 Provisions concerning prices and marketing 64

(ii) **Brazil**: Decree No. 63,196 of 29 August 1968 regulating prices on the domestic market and enacting other measures 66

(iii) **Colombia**: Decree No. 46 of 14 January 1965 enacting provisions on control of prices 69

III. EXTRACTS FROM LAWS AND REGULATIONS DIRECTLY PROMOTING THE CONCENTRATION OF ENTERPRISES 73

(i) **Argentina**: Law No. 20,628 of 31 December 1973 concerning profits tax 74

(ii) **Brazil**: Legislative Decree No. 1,182 of 16 July 1971 establishing incentives for mergers and consolidations 76

CONTENTS (contd.)

Page

(iii) Mexico: Decree of 19 June 1973 granting incentives to companies and economic units which promote national industrial and tourist development 79

IV. EXTRACTS FROM COMMERCIAL CODES RELATING TO JOINT OWNERSHIP OF ENTERPRISES 89

(i) Argentina: Legislative Decree No. 19,550 of 25 April 1972. Law on commercial companies 90

(ii) Colombia: Commercial Code. Volume II 92

(iii) Chile: Law No. 251 as amended by Law No. 17,308 of 1970. 94

V. EXTRACTS FROM LAWS AND REGULATIONS AIMED AT CONTROLLING FOREIGN INVESTMENT AND PROMOTING THE DEVELOPMENT OF DOMESTIC ENTERPRISES ... 97

(i) Argentina: Foreign Investment Law No. 20,557 of 6 December 1973 98

Decree No. 413 of 1973 promulgating regulations to Law No. 20,557 108

Law No. ... on industrial development 113

(ii) Brazil: Law No. 4,131 of 1962 on foreign capital 116

(iii) Mexico: Law of ....

for the promotion of Mexican investment and the regulation of foreign investment 124

Decree of ...

establishing the incentives, assistance and facilities to be granted to the industrial enterprises referred to in the Decree of 23 November 1971 134

(iv) Andean Group: Decision No. 24 of the Commission of the Cartagena Agreement. Common régime for the treatment of foreign capital and for trade marks, patents, licences and royalties 136

CONTENTS (contd.)

Page

VI. EXTRACTS FROM LAWS AND REGULATIONS AIMED AT CONTROLLING RESTRICTIVE BUSINESS PRACTICES EMBODIED IN INTERNATIONAL LICENCING AGREEMENTS 147

(i) Argentina: Law No. 19,231 of 13 September 1971 148

(ii) Brazil: Law No. 5,772 of 1971. Code of industrial property 154

Law No. 4,131 of 1962 on foreign capital 156

Ministry of Finance order No. 436 of 30 December 1958 158

Application form for the registration of contracts for the transfer of technology 161

(iii) Mexico: Law of 28 December 1972 concerning registration of the transfer of technology and the use and working of patents, trade-names and trade-marks.. 173

(iv) Andean Group: Decision No. 24 of the Commission of the Cartagena Agreement. Common régime for the treatment of foreign capital and for trade-marks, patents, licences and royalties.................. 177

I

LAWS AND REGULATIONS CONCERNING PRACTICES RESTRICTING COMPETITION AND CONCERNING ABUSE OF ECONOMIC POWER

(i) Argentina
(ii) Brazil
(iii) Colombia
(iv) Chile
(v) Mexico

ARGENTINA

SUPPRESSION OF SPECULATION AND MONOPOLIES (TRUSTS)

LAW NO. 12,906 of 30 DECEMBER 1946

Article 1. Any person who participates, directly or through a third party, in a consortium, agreement, coalition, combination, amalgamation or merger of capital designed to establish or maintain a monopoly and to profit thereby, in one or more branches of production, industry, land, air, river or sea transport, or internal or external trade, in the whole or any part of the national territory, shall be liable by the mere fact of participation, to the penalties provided under the present law.

Article 2. For the purposes of the present law, the following in particular are considered as monopoly acts or acts designed to establish a monopoly:

(a) Acts which hinder or tend to hinder free competition by other persons, natural or artificial, in one or more branches of production, industry, land, air, river or sea transport, or internal or external trade;

(b) Acts which, through their obstruction of internal or international trade, their prevention of maximum efficiency of production, or their use of devices to present fair competition in prices to consumers, thereby increase or are designed to increase, arbitrarily and disproportionately to the capital actually employed, the gains of the person or persons performing such acts;

(c) Agreements to divide up, for the benefit of particular persons, natural or artificial, all or part of the national territory, as exclusive markets for particular products or services and with respect to any right on such products or services, for the purpose of eliminating competition, causing a rise or fall in prices, or imposing a fixed price with respect to the right relating to such products or services;

(d) Agreements to limit the production or processing of one or more articles or products, or the performance of one or more services, for the purpose of impeding free competition or preventing fair competition in prices to consumers or users;

(e) Agreements that require the buyer not to buy from another seller;

(f) Agreements that require the buyer or hirer of an article or product, or the user of a service, as a necessary condition for obtaining the said article, product or service, to buy, hire or use other articles, products or services;

(g) Agreements imposing a specific resale price, in cases where the articles or products are not protected by a trademark or patent;

(h) Destruction of raw materials, livestock or industrial products at any stage of processing or production, or the destruction of the means of extracting, producing or transporting them, for the purpose of causing a rise in prices, eliminating or impeding free competition, or preventing fair competition in prices to consumers or users;

(i) Abandonment of harvests, crops or plantations, or agricultural or cattle products, closing of factories, plants or other industrial establishments, or cessation of mining, for the purpose of causing a rise in prices, eliminating or impeding free competition, or preventing fair competition in prices to consumers or users;

(j) Hoarding, withdrawal from consumption in any form, or agreement not to sell, for the purpose of causing a rise in the prices of the raw materials, manufactured goods or products of any kind intended for food, clothing, housing, building, lighting, heating, health or any other kind of products that affect living conditions or the processing and transport of such goods, whether or not subject to a maximum retial price fixed by a competent authority;

(k) The sale of goods or the performance of services at less than cost price, except damaged or bankrupt stock, if the purpose is to prevent free competition;

(l) The appointment of the same person, whether natural or artificial, as director or manager of different companies or firms, or director of one and manager of another or others, when a link of that kind may lead to monopoly, restriction or elimination of competition, or the prevention of fair competition in prices to consumers or users;

(m) The acquisition, direct or indirect, by a natural or artificial person, of all or part of the shares or capital allocations of another artificial person, when the purpose of such acquisition is to establish a monopoly, restrict or eliminate competition, or prevent consumers or users from enjoying fair competitive prices.

PENALTIES

Article 3. Commission of the acts referred to in article 1 or any sub-paragraph of article 2 of the present law shall entail the following penalties:

(1) in the case of an act committed by a natural person, either imprisonment from one to six years, or a fine of 2,000 to 1 million Argentine pesos. In the case of a second offence, both penalties may be imposed;

(2) in the case of an act committed by a director, manager, agent or representative of one or more artificial persons, with the means or resources provided by or obtained from such person for that purpose so that the act is committed in the name, with the assistance, or for the benefit of the artificial person, the following penalties shall be imposed:

(a) a fine of 2,000 to 1 million Argentine pesos, applicable jointly to the assets of the artificial person and the private assets of directors, managers, agents or representatives who have participated in the commission of the punishable act;

(b) imprisonment from one to six years for directors, managers, agents or representatives who have participated in the commission of the punishable act.

Article 4. In no circumstances may a person, natural or artificial, sentenced to a fine benefit from article 26 of the Penal Code.

Article 5. Without prejudice to article 50 of the Penal Code, any person, natural or artificial, who, having been sentenced on final judgment to payment of a fine for an act covered by the present law, commits a further offence of the same nature, shall be declared a recidivist.

Article 6. The penalties provided in article 3 shall be doubled where the act is committed when the country is in a state of war.

Article 7. The following additional penalties may be imposed:

(a) Loss of any concessions, privileges or prerogatives enjoyed by the natural or artificial person;

(b) withdrawal of juridical personality;

(c) removal from the Public Register of Commerce in the case of commercial companies not having juridical personality;

(d) partial deprivation of civil rights for from three to ten years, in the case of natural persons engaged in trade;

(e) total deprivation of civil rights for from three to ten years, in the case of government officials.

OBLIGATIONS AND FACULTIES

Article 8. It shall be the responsibility of the Executive or of the administrative body appointed by it:

(a) to supervise the execution and application of the present law;

(b) to promote any investigations requested by either Chamber of the National Congress in connexion with questions related to the present law, and to report the result;

(c) to propose any measures that may be necessary to safeguard the national economy insofar as it is or may be affected by acts or operations of international monopolies.

Article 9. For the purposes of the investigation of acts punishable under the present law, when a report has been received or there are good grounds for believing that such an act has been committed by any natural or artificial person, the Executive or the body appointed by it shall have the following powers:

(a) to call for general or specific information and conduct inquiries regarding the activities of the persons under investigation;

(b) to check and inspect stocks, and to verify the origin and cost of raw materials, products and goods at any stage of processing or marketing;

(c) to establish and organize permanent or special files on the natural or artificial persons under investigation;

(d) to request directly from national, provincial or municipal authorities reports, statistics, documents and other data connected with the investigation.

Article 10. If, in the exercise of the powers conferred under article 9, the Executive or the body appointed by it finds indications or presumptive evidence of the commission of acts prohibited by the present law, it shall conduct a preliminary investigation, for which purpose it shall have the following powers:

(a) to summon and bring before it, if necessary with the assistance of the police, any person from whom it considers it desirable to take a statement, or who should be confronted or placed in an identification parade;

(b) to carry out technical tests of all kinds on books, papers, correspondence and documents of the persons and entities referred to in article 9;

(c) if, in the exercise of the powers mentioned in the preceding and present articles, it proves necessary to arrest any person who is suspected and refuses to make a statement, or to carry out house searches, seizures, checks or inspections of offices, books, papers, correspondence or documents belonging to persons or entities referred to in article 9, the competent judge shall issue the necessary arrest or search warrant, after satisfying himself that the measures proposed are commensurate with the seriousness of the acts under investigation. No warrant shall be necessary for searches or seizures in public buildings or places, offices, shops, business premises, meeting or recreation halls, or industrial or rural establishments open to the public, except any part used as a private dwelling or residence.

Article 11. If it appears from the results of the preliminary investigation that there are strong indications or substantial evidence that a prohibited act has been committed, the Executive or the body to which it has delegated the powers referred to in articles 9 and 10 shall initiate proceedings before the competent judge, and appoint an official to represent it in the proceedings and to continue to do so through all the courts.

Article 12. The powers and faculties granted to the Executive or to the body to whom it delegates the functions referred to in articles 9 and 10 may be exercised in any place in the Republic, whenever the acts under investigation impede or prejudice, or are liable to impede or prejudice, inter-jurisdictional trade. By inter-jurisdictional trade shall be understood trade with foreign nations, trade between provinces, trade between a province and a national territory, a port or the federal capital, and vice-versa.

Article 13. A province may conclude an agreement with the national Executive whereby the latter may exercise all or part of the functions conferred on it under the present law, within the jurisdiction of the contracting province, for the purposes of the investigation or suppression of acts affecting local trade and shall stipulate the financial contribution to be paid by the province towards the expenses incurred.

JUDICIAL PROCEDURE

Article 14. The preliminary investigation, conducted as laid down by the present law, shall constitute the basis for the judicial proceedings, and the findings shall be submitted to the competent judge to whom the report or complaint has been made.

The judge shall order the confirmation or continuation of the investigation and such measures as he may consider necessary to complete it.

On completion of the investigation, which shall not take more than 90 days from the time when the report or complaint was made, the judge shall order a remand in custody pending trial or an appropriate adjournment.

Article 15. The remand order shall also include an order for the seizure of sufficient of the private property of natural persons, and of the merchandise, assets or other property of artificial persons concerned, to provide security for the payment of a fine and the discharge of the civil liabilities involved.

An order for the seizure of property may not be withdrawn except on deposit of security.

Article 16. Upon completion of the formalities prescribed in articles 14 and 15, the remaining proceedings shall be governed by the rules set forth in the third book of the Code of Criminal Procedure for the federal court and the courts of the capital and national territories.

Article 17. In any judicial proceedings arising from offences punishable under the present law, the public prosecutor (ministerio fiscal) shall bring the facts to the notice of the Executive for the purposes of its participation in the proceedings.

SUPPLEMENTARY PROVISIONS

Article 18. The federal judges shall try all cases arising out of violations of the present law when the subject of the charge affects or may affect inter-jurisdictional trade; in such cases, the competent judge shall be the district judge in whose district the act was committed, or in which is situated the principal residence or place of business or the domicile of any of the persons charged.

If the act was committed within the jurisdiction of the federal capital, the competent judges shall be the judges of the ordinary criminal court.

Article 19. The time-limit for the prosecution and punishment, including punishment by fine, of offences covered by the present law, shall be six years.

The time-limit for prosecution shall not apply during judicial proceedings, and prosecution shall not be stopped by voluntary payment of the maximum fine.

Article 20. Any person who participates, casually or regularly, in an investigation under the present law, and divulges information concerning action taken in the course of the investigation, shall be liable to the penalties provided in article 156 of the Penal Code.

Any person committing this offence shall be liable to public prosecution.

Article 21. For the purposes of the present law, "artificial person" means any subject of law which is not a natural person, whether or not it possesses juridical personality, whether it takes the form of a company or a simple association, whether its purposes are commercial or civil, and whether or not it is registered or authorized to operate as such. It also includes agencies, representatives, branches or affiliates of artificial persons in public or private law, domiciled outside the national territory.

Juridical persons such as the State and similar entities enumerated in article 33, paragraphs 1 to 4, of the Civil Code are excluded from this definition.

Article 22. Acts of associations of workmen or employees seeking better working conditions or pay are not included among the acts punishable under the present law.

Article 23. Law No. 11,210 is hereby abrogated.

Article 24. The present law shall be communicated to the Executive.

BRAZIL

Decree No.52,025 of 20 May 1963

REGULATIONS GIVING EFFECT TO LAW NO. 4137 OF 10 SEPTEMBER 1962 CONCERNING THE SUPPRESSION OF ABUSES OF ECONOMIC POWER

TITLE I

GENERAL PROVISIONS

Chapter I

SUPPRESSION OF THE ABUSE OF POWER

Article 1. Under article 148 of the Federal Constitution, Law No. 4137 of 10 September 1962 and the present Regulations, all forms of abuse of economic power of whatever description are prohibited.

Chapter II

CONCERNING THE FORMS OF THE ABUSE OF ECONOMIC POWER

Article 2. The following are considered to be forms of the abuse of economic power:

(i) The control of Brazilian markets, or the elimination of competition, in whole or in part, by means of:

(a) arrangements or agreements among enterprises, or among persons connected with such enterprises or having an interest in their activities;

(b) the acquisition of corporate assets, or of shares, stock, securities or rights;

(c) association, absorption, mergers, integration or any other form of concentration of companies;

(d) the concentration of stock, securities, shares or rights in the hands of one or more enterprises or of one or more natural persons;

(e) the holding of directorships or administrative or managerial posts in more than one enterprise;

(f) the total or partial cessation of the activities of an enterprise, whether instigated directly or by third parties;

(g) creating difficulties in connexion with the incorporation, operation or development of an enterprise;

(ii) The raising of prices without just cause, in the case of a natural or de facto monopoly, for the purpose of arbitrarily increasing profits without increasing production;

(iii) Creating monopoly conditions or engaging in harmful speculation for the purpose of bringing about temporary price increases by:

(a) destroying producer or consumer goods or rendering them unserviceable, whether directly or through third parties;

(b) establishing a monopoly in goods or raw materials;

(c) keeping back producer or consumer goods in such a way as to cause a scarcity;

(d) using artificial means to cause price fluctuations, to the detriment of competing enterprises or sellers of raw materials;

(iv) The formation of economic groups by the association of companies, to the detriment of freedom of decision on the part of buyers or sellers, by:

(a) price discrimination between buyers or between sellers, or making discriminatory charges for services rendered;

(b) making the sale of any goods subject to the purchase of other goods or to the utilization of a particular service, or making the utilization of a particular service subject to the purchase of certain goods;

(v) The practice of unfair competition by:

(a) insisting on exclusive rights in promotional advertising;

(b) reaching prior agreement on prices or profit margins in connexion with public or administrative tenders.

Article 3. In cases where there is a firm with which a small number of enterprises are not in a position to compete in a particular branch of trade or provision of services, that firm shall be required to provide evidence of its production costs if there are strong indications that it is charging excessive prices.

Article 4. Monopoly conditions shall be considered to be those in which an enterprise or group of enterprises control the production, distribution or sale of a particular kind of goods, or the provision of a particular kind of service, to such an extent that they come to exercise a preponderant influence on the price of those goods or services.

Sole Paragraph. An enterprise shall be deemed to practise abuse of economic power if, when operating under monopoly conditions, it suspends or greatly reduces production without good reason, established to the satisfaction of CADE, in order to bring about a rise in prices or the stoppage of the industries dependent on it.

Article 5. An enterprise is a trading organization, whether registered as such or not, engaged in carrying on, through natural or artificial persons, any gainful activity.

Chapter III

CONCERNING PENALTIES

Article 6. Enterprises committing acts of abuse of economic power shall be subject to the following penalties, without prejudice to the civil or criminal responsibility of its directors and managers as individuals:

(i) A fine of from 5 to 10,000 times the amount of the highest minimum salary in effect on the date of the decision;

(ii) Government supervision (intervenção) to ensure compliance with CADE's decision, in one, several or all the enterprises.

Article 7. The amount of the fine shall be established by CADE, taking into consideration:

(a) the nature of the offence;

(b) the amount of the profit or advantage gained, as estimated by CADE;

(c) the amount of loss or damage caused to third parties or to the national economy, as estimated by CADE;

(d) the liquid assets of the enterprise.

Article 8. Within five days from the date of CADE's decision, one copy of the papers in the administrative proceedings shall be sent to the Public Prosecutor for any action that may be necessary.

Article 9. Natural persons who are directors or managers of juridical persons owning enterprises shall be civilly and criminally responsible for the abuses of economic power committed by them.

Article 10. Subordinate staff and administrators of enterprises who exercise functions delegated to the Government and who commit heinous acts of abuse of economic power shall be liable, in addition to the penalty under the criminal law, to dismissal from their office or post; measures to effect this may be instituted by the Public Prosecutor or by the injured party before higher administrative authority or the Judiciary.

Article 11. In addition to the liability referred to in the previous article, the party injured by abuse of economic power may demand from the entity and its administrators or any other persons responsible, jointly, restitution of loss and damages in the usual legal form.

TITLE II

THE ADMINISTRATIVE BOARD FOR ECONOMIC DEFENCE (CADE)

(Conselho Administrativo de Defesa Economica)

Chapter I

CONCERNING ORGANIZATION

Article 12. The Administrative Board for Economic Defence (CADE), with head office in the Federal District and jurisdiction throughout the national territory, is directly answerable to the President of the Republic and shall be responsible for:

(i) bringing to light and suppressing abuses of economic power;

(ii) supervising the administration and economic management of the enterprises in which the Union has an interest;

(iii) supervising the accounts of enterprises of all kinds;

(iv) carrying out economic research.

Article 13. CADE shall be composed of a Chairman and four other members designated Counsellors, who shall be appointed by the President of the Republic, approved by the Federal Senate and chosen from among Brazilians over 30 years of age possessing a wide knowledge of legal or economic affairs and an unblemished reputation.

Sole paragraph. The Counsellors shall be assisted in the discharge of their Statutory duties by advisers, numbering not more than four for each Counsellor and freely chosen by him from among persons enjoying his confidence. These advisers shall be engaged for not longer than the period of the Counsellor's appointment, and their duties shall be defined by the Counsellor, who shall in all cases be responsible for their activities.

Article 14. CADE shall comprise the following:

(i) The President;
(ii) The plenary Board;
(iii) A Legal Department;
(iv) An Executive Director;
(v) A Department of Economic Research;
(vi) A Department of Control;
(vii) A Department of Audits and Accountancy Control;
(viii) A Department of Administration;
(ix) Regional Inspectorates.

Chapter II

DUTIES

Article 15. The duties of CADE shall be as follows:

(i) to undertake preliminary inquiries, where there is strong evidence of abuse of economic power, with a view to ascertaining whether there are actual grounds for instituting administrative proceedings to establish the existence of such abuse and to suppress it;

(ii) upon the receipt of complaints, to establish the existence of any acts constituting abuses of economic power;

(iii) to order measures to be taken that will lead to the cessation of abuses of economic power within the time-limit specified;

(iv) to decide whether or not there is an abuse of economic power;

(v) to notify its decisions to the parties concerned and ensure that they are complied with;

(vi) to instruct the Legal Department concerning the appropriate administrative and legal measures to be taken;

(vii) to call upon the organs of the Federal Executive, and to request the State and local government authorities, to take the necessary measures to ensure that the law under reference is complied with;

(viii) to request all organs of the administration to provide the services, staff and information and to take the steps necessary to enable this law to be complied with;

(ix) to approve the appointment of specialists and technical experts to assist in carrying out inquiries, surveys and studies and to determine in each case the fees and other costs of the proceedings to be paid by the enterprise if found guilty;

(x) to request government supervision;

(xi) to notify the names of the government supervisors to the Courts;

(xii) to instruct the Legal Department to take steps under Law No. 3502 of 21 December 1958 to seize and confiscate property or assets obtained as a result of illicit enrichment by members of CADE, their assistants and persons working there;

(xiii) to impose fines;

(xiv) to prepare a table of the staff requirements of CADE for submission to the National Congress through the President of the Republic;

(xv) to provide the President of the Republic annually with the data required for preparing the appropriation for CADE in the budget of the Union;

(xvi) to propose the expropriation of the assets of enterprises;

(xvii) when necessary, to prepare surveys of juridical persons;

(xviii) to acquaint the public with the forms taken by abuses of economic power;

(xix) to divide the country into regions in order to define the area for which each Regional Inspectorate is responsible;

(xx) to appoint the inspectors and other members of the Regional Inspectorates;

(xxi) to appoint the heads of departments;

(xxii) to supervise, through the appropriate department, the enterprises in which the Union participates directly or indirectly;

(xxiii) to carry out economic research through the appropriate department.

Article 16. The duties of the President of CADE, who is the representative of the President of the Republic and is removable *ad nutum*, are:

(i) to preside at meetings, ensure that their decisions are complied with, and see to it that the regulations are carried out;

(ii) to allocate the cases, by lot, among the members of CADE at meetings of the Board;

(iii) to give a casting vote in case of a tie, besides voting as a member of CADE;

(iv) to call upon any department of the Federal Government, including autonomous bodies and mixed-economy enterprises, and to request States and local authorities to provide the information and take the steps necessary to carry out Law No. 4137;

(v) to act as the legal representative of CADE;

(vi) to direct, control and supervise the various departments of CADE;

(vii) to convene the meetings and have the agenda prepared;

(viii) to prepare a table of the staff required and submit it to CADE for its approval;

(ix) to sign the correspondence.

Article 17. The duties of the Counsellors are:

(i) to take charge of investigations and report on complaints regarding acts of abuse of economic power;

(ii) to vote on all questions submitted to the plenary Board for decision;

(iii) to record the decisions on cases on which they have reported;

(iv) to perform the other duties assigned to them under the regulations.

Article 18. The decisions of CADE shall be by majority vote and require the presence of at least four (4) members including the President;

Sole paragraph. In the case of a tied vote the President shall decide by giving his casting vote.

TITLE III

CONCERNING THE LEGAL DEPARTMENT

Article 19. CADE shall comprise a Legal Department, which shall ensure the strict observance of the legal provisions governing the suppression of abuses of economic power. It is the duty of this department:

(i) to carry out the decisions of CADE and ensure that they are complied with;

(ii) in matters within its province, to ensure that the requirements of the law are observed;

(iii) during the preliminary stages of an investigation, to state its views on whether the complaint should be dismissed or whether the appropriate administrative procedure should be instituted;

(iv) to minute the complaints received by CADE;

(v) to follow the preliminary inquiries and administrative proceedings and explain to the plenary Board the grounds for the complaint;

(vi) to request CADE to take the action and provide the information deemed necessary for conducting the preliminary investigations, and to be present when the investigations are being carried out;

(vii) to provide information on complaints received by CADE and to express a legal opinion on their admissibility.

Sole paragraph. The Legal Department shall assign to each Regional Inspectorate a regional prosecutor chosen from among the prosecutors on the staff of CADE.

Article 20. The staff of the Legal Department shall consist of prosecutors appointed by decree of the President of the Republic and chosen from among the assistants, legal advisers, and prosecutors of the Union or of its autonomous and semi-State bodies holding permanent appointments, or, subject to the same conditions, from among the members of the Ministério Público of the Union or of the States.

1. The prosecutors shall be appointed for two years and may be reappointed.

2. A prosecutor assigned to a case is required to follow it to its conclusion and may be replaced only on the grounds of illness or leave of absence, or by decision of the Chief Prosecutor.

3. Legal opinions delivered by the prosecutors shall immediately be attached to the documents, which shall then be submitted to the Chief Prosecutor for his views.

4. Prosecutors shall be held responsible for not exceeding the time-limits laid down by law.

5. The number of prosecutors shall be established by decree of the President of the Republic, upon a proposal by the President of CADE stating his reasons.

Article 21. The Legal Department shall be headed by a Chief Prosecutor appointed by the President of CADE from among the prosecutors on his staff. His duties will be as follows:

(i) to organize and direct the activities of the Legal Department;

(ii) to supervise the work of the prosecutors and express an opinion on their submissions;

(iii) to be present at the meeting of CADE, without the right to vote;

(iv) to deal with cases himself and state his opinion;

(v) to allot cases to the prosecutors;

(vi) to remove from a case any prosecutor who has shown himself to be negligent or is suspected of being in touch with the other party;

(vii) to appoint and dismiss regional prosecutors.

Article 22. The duties of the prosecutors are:

(i) to give legal opinions on the cases allotted to them;

(ii) to follow the cases in the Courts;

(iii) to take the necessary steps to ensure that the provisions of the law are strictly complied with, and to request that measures that are outside their competence may be taken.

Sole paragraph. Before taking up his duties, a prosecutor on the staff of CADE shall make a declaration regarding his own property and income and those of his wife, and shall bring it up to date by 30 April of each year.

Article 23. Prosecutors on the staff of CADE may not act as the representatives in commercial or legal matters of enterprises holding public service concessions or granted privileges by the State.

CONCERNING THE DEPARTMENTS

Article 24. CADE shall be assisted by departments responsible for the control and supervision of enterprises in which the Union desires to carry out economic investigations, for the auditing and supervision of accounts, and for administration, respectively.

1. The departments, which are directly subordinate to the Executive Director, shall be headed by directors who shall be regarded as being independent vis-à-vis the persons or enterprises with whom they may have to maintain relations, except in cases where the Department concerned requests an express authorization from CADE.

2. Without prejudice to the above-mentioned provision, the directors are required to provide the members of CADE with the information they request and to carry out their decisions.

3. The appointment of the directors and their assumption of office shall be in accordance with the provisions of article 34(2).

CONCERNING THE ECONOMIC DEPARTMENT

Article 25. It is the duty of the Economic Department to carry out research work and studies that will enable it:

(i) to ascertain the influence on the national economy of the profit margins obtained by enterprises and the use to which they are put in the form of distributed or re-invested profits;

(ii) to fix profit margins for the various branches of the economy, above which it will be considered that there is an abuse of economic power;

(iii) to define what constitutes unfair competition;

(iv) to be acquainted with the economic groupings operating in the country which are formed by association between individuals or between firms or between the former and the latter;

(v) to identify the ways and means whereby economic groupings influence the national economy;

(vi) to be acquainted with the legal or de facto monopolies and with the enterprises which hold a dominant or preponderating position in, or control, the production, trade in, transport, distribution, provision or sale of particular goods or services;

(vii) to be cognizant of other matters related to the above-mentioned duties.

CONCERNING THE DEPARTMENT OF CONTROL

Article 26. It is the duty of the Department of Control to carry out continuous supervision over the administration, economic management and accounts of State-owned enterprises and also of any and every company with which the Union is associated, either directly or through an organ exercising indirect administration, including their operating units, branches and subsidiaries; to keep the President of the Republic informed of the results of its investigations and to suggest the steps that should be taken.

Sole paragraph. The supervision shall be effected by an indirect process of inquiry, a posteriori.

Article 27. In supervising economic management the Department of Control shall investigate, inter alia:

(i) whether the activities of the enterprise are in accordance with its social purpose and the interests of the national economy;

(ii) whether its programme of work is being carried out and is in accordance with the priorities laid down;

(iii) the financial and economic policies being followed;

(iv) organization and procedures;

(v) the accountancy system used and the methods employed for checking the results, establishing capital reserves and amortizing invested capital;

(vi) whether the operating results are in line with those of similar enterprises without government capital and, if not, why;

(vii) the total expenditure on staff and the salaries paid, showing how they compare with the salaries paid by other government enterprises and by similar enterprises without government capital;

(viii) the number of staff members engaged annually, showing how they are recruited, and the criteria used in making appointments to senior posts;

(ix) contracts concluded with third parties, particularly with suppliers of raw materials and equipment.

Article 28. In carrying out its duties, the Department of Control may use any method that permits it to be kept informed and may also:

(i) require that it be provided periodically or occasionally with reports, bulletins, statistics, balance-sheets, trial balances and programmes of work;

(ii) keep in touch with the directors and departmental heads of the enterprises under supervision;

(iii) in exceptional cases, when expressly authorized to do so by CADE, audit the accounts and, in general, carry out inquiries into matters of an organizational, economic or administrative nature.

Article 29. The Department of Control shall submit annually, for perusal by CADE and transmission to the President of the Republic, a report with the information referred to in article 27 and give its definite opinion on the economic, financial and administrative situation of the firms under supervision.

CONCERNING THE DEPARTMENT OF AUDITS

Article 30. The Department of Audits and Accountancy Control is empowered to examine the accounts of any and every enterprise, without prejudice to the fact that other organs have the same powers.

1. The examination, to be conducted in accordance with the instructions of the Director of the Department, will be carried out by him in person and by a group of auditors or accountants appointed together with other members of the staff of CADE;

2. Refusal to produce the accounts shall be subject to the penalties laid down in article 60, paragraphs 1 and 2, of these regulations.

Article 31. To this end, the Department shall send to CADE every year a confidential list of the enterprises whose accounts are to be examined during that fiscal year.

1. Without prejudice to the above provision, if it should become necessary to inspect other firms not mentioned in the list approved by the Department, any member of CADE may request an additional authorization.

2. The Department shall request the Regional Inspectorate to examine enterprises situated elsewhere than at CADE headquarters, and for this purpose shall transmit to the Regional Inspectorates a copy of the decision authorizing the examination and instruct them regarding the procedure to be followed.

CONCERNING THE ADMINISTRATIVE DEPARTMENT

Article 32. It shall be the duty of the Administrative Department to provide CADE with the means that will enable it to junction and to be responsible for providing staff, equipment and administrative services.

CONCERNING THE REGIONAL INSPECTORATES

Article 33. The Regional Inspectorates shall be responsible within the areas alloted to them for acting as the representatives of CADE and helping it to carry out the duties entrusted to it by law and by these regulations.

Article 34. The staff of the Regional Inspectorates shall consist of a regional inspector in charge, of as many sub-inspectors as shall be determined by CADE in the light of the requirements of the area in question, and of administrative personnel.

1. The Regional Inspectorates may also be provided with the technical staff necessary for auditing the accounts of enterprises.

2. Regional inspectors and sub-inspectors shall be selected and appointed for three years by CADE, and shall be chosen from among civilian public servants holding permanent appointments, and from among military personnel, and shall enjoy the same rights and benefits as the other members of the staff of CADE.

Article 35. The Regional Inspectorates shall:

(a) receive complaints of abuses of economic power, have them briefly investigated within 30 days by a member of their staff, and transmit them to CADE together with a definite opinion;

(b) be held responsible for notifying CADE within 48 hours that the complaint has been received;

(c) request from enterprises any information considered necessary;

(d) obtain, or suggest to the examining Counsellor[1] that they obtain, further evidence that would help to throw light on the case under investigation;

(e) requisition from the Federal authorities, and request from the States and local authorities, the services, staff, measures, information and arrangements necessary for compliance with the law referred to in these regulations, and be responsible for notifying the President of CADE forthwith;

(f) prepare and despatch to CADE every year, purely for information, a list of experts showing their special qualifications;

(g) examine the accounts of enterprises in accordance with decisions by the Department of Audits;

(h) carry out the decisions of CADE or of its President;

(i) submit to CADE, for consideration, a table showing the staff required for their work.

Article 36. By express decision of the examining Counsellor, the Regional Inspectorates may:

(a) have preliminary investigations made by a member of their staff, who shall express a definite opinion and forward it to the examining Counsellor for consideration by CADE;

(b) take evidence from witnesses and from the accused, with the right to have recourse to the measures provided for in article 218 of the Code of Criminal Procedure;

---

[1] Translator's note. See articles 17 (i) and 42.

(c) notify the accused and the regional prosecutor of the proceedings, the opening of the hearing and the list of witnesses;

(d) verify whether the abuse of economic power has ceased;

(e) carry out any other decisions.

1. Documents connected with preliminary investigations or administrative proceedings shall be in four copies, each of which shall be duly attested. One copy shall be filed at the Regional Inspectorate and the remaining three shall be forwarded to CADE within 48 hours of the date of the last document.

2. The witnesses and the accused shall be examined at a public hearing attended by, at least, the regional inspector, the regional prosecutor,and one other member of the staff of the Regional Inspectorate. They shall be asked to reply to questions forwarded by the examining Counsellor and the Chief Prosecutor and to any further questions put by the members of the Regional Inspectorate and the regional prosecutor, and by counsel for the accused who, however, may only interrogate the witnesses.

3. If so required, in order to expedite the proceedings, the offices of the Regional Inspectorates may be moved to another district or to a place within the jurisdiction of another Inspectorate, for the purpose of collecting evidence.

TITLE IV

PROCEDURE

Chapter I

GENERAL PROVISIONS

Article 37. CADE shall investigate whether there is an abuse of economic power:

(i) ex officio;

(ii) as a result of a complaint by:

(a) the Governor of a State;

(b) a Legislative Assembly;

(c) the Prefect of a District;

(d) a town council;

(e) a Department of Federal, State or municipal government, or an autonomous or mixed-economy body; or

(f) a natural or artificial person.

Sole paragraph. The complaint shall be in writing and in duplicate and shall give the name, profession and address of the complainant, whose signature must be attested; it shall set out in detail the circumstances which indicate an abuse of economic power, and shall refer to the legal provision involved.

Article 38. The Federal Authorities and the heads of Federal autonomous bodies or mixed-economy enterprises are required to report to CADE any abuses of economic power that come to their notice in the course of their duties.

Article 39. Inquiries shall be made

(i) by preliminary investigation, and

(ii) by administrative proceedings.

Chapter II

CONCERNING PRELIMINARY INVESTIGATIONS

Article 40. The purpose of the preliminary investigation, which shall be in summary form, without the interposition of the accused, is to establish whether there is real cause for resort to administrative proceedings; it shall be conducted in the manner laid down in this chapter.

Sole paragraph. If the complaint is received from a Parliamentary Committee of Inquiry of the Chamber or the Senate, the preliminary investigation shall be dispensed with and the administrative proceedings begun forthwith.

Article 41. Two copies of the complaint shall be sent to the Regional Inspectorate at the place where the enterprise suspected of abuse of economic power is situated. The Inspectorate shall carry out a brief investigation and return one of the copies to CADE with a definite statement of its views.

Article 42. Upon receipt, the documents shall at once be registered and submitted to the President who, at the next meeting of the Board, shall appoint an examining Counsellor, to be chosen by lot.

Article 43. The examining Counsellor shall begin the preliminary investigation, for which he shall have the widest powers, and shall attach his conclusions to the documents in the case in not more than 30 days.

1. The examining Counsellor may reject in limine any complaint not involving an abuse of economic power and so inform the Chief Prosecutor.

2. If the examining Counsellor considers that the information already obtained by the Regional Inspectorate does not throw sufficient light on the facts, he may request the Regional Inspectorate to carry out the preliminary investigation within 20 days.

Article 44. When the documents have been returned, they shall be forwarded within 24 hours to the Legal Department, which shall state its opinion within five days.

Article 45. When the time-limit has expired and the findings are ready, the examining Counsellor shall bring the file before CADE in order that it may decide whether or not to institute administrative proceedings.

1. During the meeting at which the decision is given, after the examining Counsellor has submitted his report and given his opinion, the Chief Prosecutor will make an oral statement in support of his views.

2. When a decision has been made on the complaint, the examining Counsellor will draft the decision at the same meeting or not more than 24 hours later.

Article 46. If CADE rejects the complaints and the Chief Prosecutor disagrees, he may within five days submit a reasoned request that the case be re-examined.

1. Within the same time limit the Chief Prosecutor may also request that a ruling dismissing a complaint in limine be submitted to CADE for decision.

2. Dismissal of a complaint does not rule out the possibility of a new complaint being submitted that relates to the same offence, provided it is based upon fresh evidence not adduced on the previous occasion.

Chapter III

CONCERNING ADMINISTRATIVE PROCEEDINGS

Article 47. When the complaint is considered to have been substantiated, administrative proceedings will be instituted.

1. The administrative proceedings must be conducted and concluded with the greatest expedition possible consistent with the full elucidation of the facts, and the President and members of CADE, the Legal Department and its staff and officials must make every endeavour to ensure this, under pain of being held responsible.

2. The first document in the file shall be the text, in triplicate, of the decision to institute the proceedings.

3. The examining Counsellor, the Legal Department and the accused shall be required, each time they intervene in the proceedings, to furnish three copies of the documents they submit, i.e. one for each of the files.

4. In no case may the documents leave the premises of CADE, except when the examining Counsellor has dealt with them and they have been passed to the Legal Department, or when one copy has been sent to the Regional Inspectorate to obtain evidence.

Article 48. At the meeting following that at which the decision was taken a new examining Counsellor to deal with the administrative proceedings shall be chosen by lot.

Sole paragraph. The examining Counsellor shall be in charge of all stages of the proceedings and shall endeavour to ensure that they are handled as expeditiously as possible. It will be his duty to order the taking of any steps he considers necessary to elucidate the facts, and he will be held responsible for strict compliance with legal requirements and time-limits.

Article 49. The examination forming part of the administrative proceedings shall take place before the examining Counsellor or, when he so orders, before the Regional Inspectorates.

Sole paragraph. When the examination is to take place before a Regional Inspectorate, the examining Counsellor may instruct one of his assessors to be present at the place where the evidence is taken.

Article 50. When the examining Counsellor has decided that the examination shall take place at one of the Inspectorates, the Inspectorate shall appoint a day, time and place for hearing the evidence and notify those concerned in the manner prescribed in these regulations.

1. In the circumstances referred to in this article, and in addition to the arrangements mentioned in the next article, the examining Counsellor may forward with one copy of the file the questions and inquiries needing an answer, without prejudice to other questions which may be asked by the regional inspector and the regional prosecutor, or by defending counsel, who however may only put questions to witnesses and experts.

2. The preliminary plea by the accused and a statement of the evidence the defence intends to adduce shall be submitted to the official interrogating him, and the final conclusions shall be submitted to the official hearing the last witness.

3. If the accused wishes to call before the Regional Inspectorate a witness residing in the area of another Inspectorate, the first-mentioned Inspectorate shall notify the examining Counsellor immediately.

Article 51. When the examining Counsellor has received the documents, he shall minute them within 48 hours, stating what evidence CADE intends to adduce.

1. If it is decided to call witnesses, he shall immediately list and describe them.

2. If expert evidence is to be called, the examining Counsellor shall, in the same minute, appoint the experts and specify a date, immediately following the interrogation, on which these inquiries are to be carried out; they must be completed within a maximum period of 30 days.

3. The experts shall be selected from among federal civil servants, officials of autonomous bodies and officers of the armed forces; they must be well-qualified persons of good reputation, holding permanent appointments.

Article 52. In the same minute the examining Counsellor shall:

(i) Appoint a date, time and place for the interrogation of the accused and of the witnesses for the prosecution and the defence; this must take place in not less than 10 nor more than 45 days from the start of the administrative proceedings.

(ii) Order the accused to be notified of the following:

(a) the full purport of the complaint and of the decision instituting the administrative proceedings;

(b) that he is required to appear for interrogation on the date and at the time and place specified;

(c) that he must submit his defence within not more than three days of the interrogation;

(d) that he must attach to his plea a statement of any other evidence he proposes to submit.

Article 53. If the accused wishes to call witnesses in rebuttal, he must immediately provide a list of them together with particulars. They may not exceed eight in number and they will be summoned by CADE to appear on the date to be determined by the examining Counsellor.

Sole paragraph. If evidence is given by experts, the accused may put questions, which shall be answered by the experts designated by the examining Counsellor.

Article 54. Notifications shall always be sent to the addressee personally, by means of a letter with certified delivery or through the offices of the Registrar of Deeds and Documents.

Sole paragraph. When every means of personal notification has been used without success, because it has proved impossible to trace the accused, a special notice shall be inserted in the Diario Oficial[2] and in a newspaper with a large circulation in the State in which the persons concerned reside or have their offices, and this shall be regarded as constituting a personal notification.

2/ Translator's note. The Brazilian "Official Gazette".

Article 55. Once the notification has been made it shall be valid in respect of all the other documents or time-limits in the proceedings which the secretariat of CADE is responsible for enforcing, regardless of whether they have been notified or published, except for the announcement of the final decision, which shall be made by publication in the Diario Oficial.

Article 56. A person who has been notified and who fails to submit his plea within the time-limit set by law shall be regarded as contumacious and the other time-limits shall be enforced regardless of whether they have been notified.

Sole paragraph. A contumacious person may intervene at whatever stage the proceedings have reached.

Article 57. The enterprise accused may be represented in the proceedings by its owner, directors or managers, or by counsel legally entitled to do so. In all cases the enterprise accused shall have extensive access to the proceedings within CADE.

Article 58. The hearing shall begin with the interrogation of the accused, after which the witnesses for the prosecution and for the defence shall testify, in that order.

1. All the witnesses called by CADE, and those called by the accused, not exceeding eight in number, shall be examined.

2. If the witness does not appear, the procedure laid down in article 218 of the Code of Criminal Procedure, under which he is required to appear within five days, shall be applied.

3. If a witness, expert, translator or interpreter makes a false statement or denies or conceals the truth, this shall be treated as an offence punishable under article 342 of the Criminal Code.

Article 59. The experts shall be examined immediately after the interrogation, and the parties may put questions up to the date of the hearing.

1. The expert shall be at liberty to proceed as he wishes and may examine witnesses and make use of other sources of information.

2. The expert's report shall be submitted in not more than 30 days.

Article 60. The accused is required to show his accounts, including all books, papers and files of any description, to the expert.

1. Refusal to show the accounts shall be punishable by a fine of from 5 to 500 times the highest minimum salary in force on the day of the offence; its amount shall be fixed by CADE.

2. In case of refusal, and without prejudice to the other penalties prescribed by law, CADE shall apply to the Courts for an order for production of the documents, in accordance with the rules laid down in article 216 and following articles of the Code of Civil Procedure.

Article 61. The examining Counsellor may decide that additional inquiries should be made and order postponement for not more than 20 days for the purpose of further investigations.

Article 62. Not more than five days after the hearing of evidence has been completed, the Legal Department shall submit its views, following which, and within a similar period, the accused shall submit his.

Article 63. Upon the expiry of the time-limit and within a period of 10 days, the examining Counsellor shall submit the case for decision.

Article 64. At the hearing at which the decision is given, which shall be in accordance with the rules of CADE, the prosecutor and the accused or their counsel shall each be entitled to speak for 15 minutes.

1. The hearing may not be interrupted and the proceedings may be extended for as long as is necessary to conclude them.

2. When the case has been decided, the examining Counsellor shall draw up the text of the decision on the day of the hearing or not more than 24 hours later, for immediate publication in the Diario Oficial, where it shall be accorded priority.

Article 65. The decision of CADE to the effect that an abuse of economic power exists shall:

(a) set forth the facts concerning the abuse of economic power and specify the measures which those responsible are required to take to bring them to an end;

(b) lay down a period, the length of which shall be determined in accordance with circumstances, for introducing and fulfilling the measures referred to in the previous sub-paragraph;

(c) specify the amount of the fine, which shall be not less than 5 nor more than 10,000 times the highest minimum salary in force on the day of the decision.

Article 66. Within 10 days of the publication of the decision in the Diario Oficial, the accused must state whether or not he proposes to carry out the measures ordered by CADE in order to bring to an end the abuse of economic power within the time-limit specified.

1. When the accused has stated that he will comply with the decision, CADE shall, at the end of the specified period, proceed ex officio to carry out investigations in order to establish whether or not the abuse of economic power has ceased.

2. The agreement of the accused shall only be accepted if he has paid the fine.

Article 67. When CADE has established that the abuse of economic power has ceased, those responsible shall, within five days, sign an undertaking not to commit a further offence, on penalty of an additional fine, the amount of which shall be double the maximum amount provided for in article 43 of Law No. 4137 of 10 September 1962.

Sole paragraph. If the second offence is of the same nature, the enterprise shall immediately be placed under Government supervision (intervenção), in addition to paying the increased fine.

Article 68. In securing payment of the fine through the Courts, the procedure shall be that used in Government actions to recover fiscal debts.

Chapter IV

CONCERNING GOVERNMENT SUPERVISION (Intervenção)

Article 69. In cases when the time allotted for complying with the decision has expired without the accused having taken the measures ordered, CADE shall, within 10 days, lodge a request for government supervision (intervenção) of the enterprise with the Treasury Court at the place where the offices of the enterprise are situated, or at one of them, at the discretion of CADE, if the enterprise has offices in several places.

1. The initial request, which shall state the reasons on which it is based, shall be in accordance with article 158 of the Code of Civil Procedure, where applicable, and CADE shall immediately provide the name of a supervisor possessing the necessary qualifications.

2. The request, which shall be accompanied by one copy of the record of the administrative proceedings, shall give full details of the acts or facts established which constitute an abuse of economic power and the reason for appointing a government supervisor.

Article 70. The judge shall order that any omissions or irregularities in the original request shall be remedied within 10 days, and direct CADE to provide the information considered necessary within the same time-limit.

1. If it is established that in the course of the administrative proceedings there were irregularities in the procedure for notifying the accused, or that the accused was not allowed his full legal rights, and the defects cannot be remedied, the judge shall reject the original request.

Article 71. If the original request is accepted, the judge shall give his decision within 15 days.

Article 72. If the request for government supervision is rejected, an appeal may be made to the Federal Court of Appeal.

Article 73. If an order for government supervision is given, the judge shall request CADE in writing to put the order into effect.

1. The decision of the Court shall be carried out by the government supervisor already appointed by CADE.

Article 74. An official notification shall be addressed to the accused requesting him to state his views within 48 hours with regard to the supervisor who has been appointed.

1. The appointment may be called in question only on the grounds of the unfitness or unsuitability of the government supervisor, and proof of this must be submitted within three days.

2. The judge shall decide the point within three days.

3. When the time-limit laid down in this article has expired and the appointment has not been called in question, or the objection to it has been overruled, the judge shall establish the emoluments of the supervisor and issue a Court order appointing him.

4. When the objection by the accused has been found valid, the judge shall allow CADE five days to appoint another person as supervisor.

Article 75. When the supervisor has assumed office, the judge shall notify the accused of his decision, or, where appropriate, request another judge elsewhere to do so.

Article 76. Within 10 days of the notification, the accused may ask for a stay of execution.

Article 77. When a stay of execution is asked for, the documents shall be laid before a representative of the Ministério Publico for 10 days, to enable it to decide whether to oppose the stay of execution.

Article 78. Upon the expiry of the time-limit for objecting to the stay of execution, the judge may, at the request of the parties, grant an extension of 10 days for the submission of evidence, at the end of which he shall appoint a date and time for the hearing and decision, in accordance with the provisions of articles 263 and 272 of the Code of Civil Procedure.

1. Within the time-limit of 10 days prescribed, the judge may, if he sees fit, prohibit ex officio any piece of evidence.

2. If the evidence has to be obtained elsewhere than at the place where the judge sits, he shall allow a period not exceeding 30 days for it to be produced.

3. The judge to whom the request is addressed is also subject to the time-limit of 30 days referred to in the preceding paragraph.

Article 79. If the stay of execution is upheld, there is an automatic right of appeal, without affecting the stay of execution; the appeal is lodged as a result of a statement made by the judge himself when announcing his decision.

Sole paragraph. The Ministério Público shall lodge an appeal with the Federal Court of Appeal within five days.

Article 80. If the stay of execution is not upheld, an appeal may be made against the decision in accordance with the procedure laid down in articles 844 and 845 of the Code of Civil Procedure.

Article 81. The proceedings and judgments referred to in these regulations have precedence over all other proceedings or judgments, except those relating to habeas corpus or court injunctions.

Article 82. Government supervision of an enterprise may be rescinded before the expiration of the time-limit laid down, at the request of the CADE prosecutor, who may adduce proof, once it has been established that the practices which gave rise to the proceedings have ceased.

Article 83. In cases where it has been found impossible for an enterprise to resume its normal activities, the judge may decide, at the request of CADE, to order the enterprise to go into liquidation, the Government being given the option to expropriate it if such a course is in the public interest.

Sole paragraph. The liquidation will take place in accordance with the provisions of book IV, title XXXVIII, of the Code of Civil Procedure.

Chapter V

CONCERNING THE GOVERNMENT SUPERVISOR (INTERVENTOR)

Article 84. The Government Supervisor (Interventor) shall be chosen by CADE from among civilian or military public servants holding permanent appointments and possessing the necessary competence and technical knowledge.

Article 85. The Government Supervisor shall be replaced if he resigns, dies, is placed under disability, declared bankrupt or forced to make an agreement with his creditors, or fails to carry out any of his duties.

Article 86. It is the duty of the Government Supervisor to take or cause to be taken the necessary steps to bring to an end the abuse which gave rise to government supervision.

Article 87. The Government Supervisor is entitled to have free access, when necessary, to all the books, papers and documents of the enterprise and to obtain information about its property and assets, including those held by third parties.

Sole paragraph. When he has taken up his duties, the Government Supervisor will make arrangements with the administration of the enterprise, if he considers it necessary, for the assets to be listed and valued.

Article 88. It is also the duty of the Government Supervisor:

(i) to receive and investigate complaints by third parties;

(ii) to report to the judge and to CADE any irregularities or fraudulent activities on the part of those responsible for the enterprises which have come to his notice;

(iii) to submit to the judge and to CADE a monthly report on the action he has taken;

(iv) to prevent any act by the directors of the enterprise which might obstruct a return to normal business activities and the termination of any abuse of economic power.

Article 89. The expenses incurred in connexion with government supervision shall be payable by the enterprise forming the subject of the supervision order.

Article 90. The persons responsible for the administration of the enterprise shall remain at their posts but shall be subject to the Government Supervisor's orders in all matters coming within his competence.

Article 91. The Treasury Judge may remove from their posts any persons responsible for the administration of the enterprise upon evidence that they are obstructing activities within the Government Supervisor's competence. The procedure for their replacement shall be that laid down in the enterprise's conditions of employment.

Article 92. If, despite the measures referred to in the preceding article one or more persons responsible for the administration of the enterprise continue to obstruct the action taken by the Government Supervisor, the Treasury Judge shall make an order for the Government Supervisor to take over the entire administration of the enterprise.

Article 93. If the majority of the persons responsible for the administration of the enterprise refuse to co-operate with the Government Supervisor, the Treasury Judge shall make an order for him to take over the entire administration of the enterprise.

Sole paragraph. In such circumstances and in those described in articles 91 and 9 the Government Supervisor shall place before the judge his reasons for considering tha his actions are being obstructed. The judge, after hearing the accused, shall decide the matter as he thinks fit within three days and give reasons for his decision.

TITLE V

CONCERNING CONTROL

Article 94. Deeds relating to the incorporation of enterprises or to changes, mergers, amalgamations or associations, and any alterations in such deeds, are required to include the following:

(i) a precise and detailed statement regarding the purposes in view;

(ii) the amount of capital held by each partner, and the manner in which it is to be paid up and the date;

(iii) full names and particulars of each participating shareholder;

(iv) the place where the head office is situated and the address, including that of any branch offices mentioned;

(v) full names and particulars of the directors;

(vi) the period for which the company has been formed;

(vii) the number, type and value of the shares.

Sole paragraph. In documents relating to the dissolution of an enterprise, the reasons for dissolution must be given, together with a statement of the amount distributed among the partners and particulars of the person or persons taking over th assets and liabilities of the concern.

Article 95. From the date when the regulations under this law come into force, the departments of the Ministry of Industry and Commerce and the corresponding bodie in the States may not register such deeds unless they comply with the above-mentioned requirement.

1. The provisions of this article apply to cases awaiting a final decision.

2. In these circumstances, the authorities responsible for registration shall allow those concerned a period of 60 days for complying with these requirements.

Article 96. Registration and approval by CADE are required in the case of deeds, arrangements, agreements or covenants of any kind between enterprises, or between persons or groups of persons associated with those enterprises or having an interest in the purpose of their trading operations, when their effect is to:

(i) establish a balance between production and consumption;

(ii) regulate the market;

(iii) standardize production;

(iv) stabilize prices;

(v) introduce specialization into production or distribution;

(vi) place restrictions on distribution to the disadvantage of other goods that are of the same kind or are intended to meet similar needs.

1. Registration is not required in the case of the arrangements referred to in this article when the purpose is to carry out normal operations in accordance with the usual commercial practice in the case of contracts of the same nature.

2. The deeds, arrangements, agreements and covenants referred to in this article shall not be valid unless first approved and registered by CADE.

3. If it is proved later that the purpose of the request was fraudulent, the fact that registration has taken place shall not prevent CADE from instituting proceedings to establish whether there has been an abuse of economic power.

4. The request for registration must be submitted to CADE within 10 days of the date of the deed, arrangement, agreement or covenant concerned.

Article 97. When a deed, agreement, arrangement or covenant has been approved by decision of CADE, it shall be recorded in the appropriate register.

Article 98. If CADE refuses to give its approval to a deed, arrangement, agreement or covenant, those concerned shall be allowed 30 days to show that they have cancelled it, failing which administrative proceedings will be instituted in the form laid down in these regulations.

Article 99. If CADE discovers the existence of deeds, arrangements, agreements or covenants that have not been submitted to it for approval, it shall declare them to be invalid and so inform those concerned.

Sole paragraph. In the circumstances referred to in this article a preliminary investigation shall be made in order to establish whether there are good reasons for instituting administrative proceedings.

Article 100. Deeds of the kind referred to in article 96 that were already in force on the date of promulgation of Law No. 4137 of 10 September 1962 must be submitted to CADE for approval within 120 days of the date when that law came into force.

1. Failure to comply with the provisions of this article within the prescribed time-limit will render those concerned liable to a fine of between 5 and 100 times the highest minimum salary, without prejudice to the enforcement of this legal requirement on pain of the appointment of a Government Supervisor.

2. In all cases the time-limit for CADE's decision shall be 60 days. Upon the expiration of this time-limit, the deed shall be held to be valid until CADE gives its decision.

3. The fine shall be levied in accordance with the provisions of article 70 of these regulations, where applicable.

Article 101. Applications to CADE for the approval and registration referred to in article 96 shall be made by means of request setting out the facts. After it has been registered, this request shall be submitted to an examining Counsellor, chosen by lot.

1. The examining Counsellor shall refer it to the technical section and to the Legal Department, which shall state their views within 20 days and within 5 days, respectively.

2. When the documents are ready, the examining Counsellor shall submit them for a decision within the time-limit prescribed in article 100, paragraph 2, of these regulations.

Article 102. Enterprises are required to provide CADE with all the information it requests in written form, duly attested.

Sole paragraph. The undermentioned are empowered to request information:

(i) any member of CADE;
(ii) the Chief Prosecutor;
(iii) the Executive Secretary;
(iv) Directors of Departments;
(v) Regional Inspectors;
(vi) Regional Prosecutors.

Article 103. Directors, administrators or managers of enterprises who refuse to provide information as prescribed in the preceding article or provide false information deceitfully or in bad faith shall be punishable by imprisonment for from one to three months.

Sole paragraph. When CADE has established the existence of the circumstances referred to in this article, it shall report the fact to the appropriate police authorities for investigation.

Article 104. Members of the staff of CADE who reveal to third parties any facts that have come to their knowledge as a result of their activities as **investigators** are guilty of an offence under article 325 of the Criminal Code and are liable to dismissal.

Article 105. Suppression of the acts constituting abuse of economic power referred to in the preceding articles does not preclude punishment for other offences against the national economy or the institution of administrative proceedings in order to inquire into offences committed by public servants or the staff of autonomous bodies.

Sole paragraph. Likewise it does not preclude investigations ordered by Parliamentary Committees of Inquiry, or research work on the economic life of the nation conducted by the National Economic Council for similar purposes.

GENERAL PROVISIONS

Article 106. The term of office of the members of CADE shall be four years; one-quarter of the members shall retire annually and may be reappointed. The first appointments shall be for four, three, two and one years, so that the above-mentioned rule may be applied from the outset.

Article 107. During their term of office, members of CADE shall, to the extent that this does not conflict with Law No. 4137 of 10 September 1962, have the same privileges and be subject to the same disqualifications as members of the Judiciary, and, like them, they shall be debarred from engaging in party-political activities; this also applies to the regional inspectors.

Article 108. The terms of office of the persons first appointed shall begin on the day when CADE is established. Subsequent terms of office shall be dated from the termination of the previous term.

Article 109. When a member resigns, dies or is dismissed, the member nominated to replace him shall perform the duties until the end of the term of office assigned to the person he replaces.

Sole paragraph. When the President is absent or incapacitated, he shall be replaced by the senior member of CADE or, in the event of equality of seniority, by the older member.

Article 110. Dismissal of a member of CADE can take place only when it is established by administrative proceedings instituted under the Civil Service Regulations that he has committed administrative irregularities during the performance of his duties.

Article 111. The following may not be members of CADE:

(a) The directors, managers, administrators, agents and persons acting as representatives in commercial and legal matters of any enterprise;

(b) The directors, managers, administrators, agents and persons acting as representatives in commercial and legal matters of enterprises holding public service concessions or granted privileges by the State;

(c) Public servants and officials of any kind not holding a permanent appointment.

Article 112. Any member of CADE who fails to attend three consecutive ordinary meetings, whatever the reason, unless he has been given permission to be absent, shall automatically be deprived of his post.

Article 113. On assuming office, members of CADE shall produce evidence that they have paid their income tax and shall make a declaration concerning their private property and income and those of their wives; this shall be brought up to date by 30 April of each year.

1. These documents shall be filed with the Audit Office.

2. Assistants to members of CADE, whatever their rank, and regional inspectors and other officials shall be required to make the declaration concerning property and income referred to in this article.

Article 114. At the instance of the examining Counsellor, any person may be invited by the President to provide information regarding matters under discussion.

Article 115. Any patent granted by the National Department of Industrial Property shall be automatically cancelled upon evidence that it has already been granted in a country having an agreement with Brazil on the matter and has lapsed there.

Article 116. The federal authorities and the directors of federal autonomous bodies and mixed-economy enterprises shall be held responsible for providing CADE with any assistance and co-operation that it may request from them.

Article 117. Civil servants, federal officials and employees of autonomous bodies or of mixed-economy enterprises who obstruct, delay or hinder the activities of CADE or of its officials or staff shall be liable to suspension or dismissal for the good of the public service through the appropriate administrative procedure, upon receipt of a complaint from CADE; this shall be without prejudice to any criminal penalties that may be applicable, also arising out of proceedings instituted by CADE.

1. In the circumstances covered by this article, the President of CADE shall notify the body or entity in which the official or employee in question is serving, and that body or entity shall then be required to institute the appropriate disciplinary proceedings.

2. When the offence is of a criminal nature, the President of CADE shall notify the competent police authorities, without prejudice to the measures provided for in the preceding paragraph.

.....

COLOMBIA

LAW NO. 155 OF 24 DECEMBER 1959, SETTING FORTH A NUMBER OF PROVISIONS CONCERNING RESTRICTIVE BUSINESS PRACTICES

Article 1. Any agreement or convention whose direct or indirect purpose is to limit the production, supply, distribution or consumption of domestic or foreign raw materials, products, goods or services and, in general, any kind of practice, method, or arrangement calculated to restrict free competition or maintain unfair prices is prohibited.

Paragraph. The Government may nevertheless authorize the conclusion of agreements or conventions which, although limiting free competition, are intended to maintain the stability of a basic sector of the production of goods or services of importance to the general economy.

Article 2. Any enterprise which produces, supplies, distributes or consumes a given article or service and which by reason of the extent of its control over the article or service in question, is in a position to fix market prices, shall be subject to State supervision for the purposes of the present law.

Article 3. The Government shall regulate standards for weights and measures, quality, packaging and classification of products, raw materials and articles or goods for the purpose of safeguarding the interests of consumers and producers of raw materials.

Article 4. Enterprises engaged in the same activity in the production, supply, distribution or consumption of a given article, raw material, product, merchandise or service and whose assets jointly or severally amount to 20 million pesos or more shall be required to notify the National Government of any projected merger, consolidation or integration operation between themselves, irrespective of the legal form of such merger, consolidation or integration.

Paragraph 1. The National Government, after consultation with the National Council for Economic Policy and Planning, shall object to the operation if it is likely to place any undue restriction on free competition.

Paragraph 2. If within thirty days of making the notification referred to above no objection to the operation had been lodged by the Government, the enterprises concerned may proceed to carry it out.

Paragraph 3. The notification to be made by enterprises concerned and the action taken on it shall be absolutely confidential, and any official who divulges all or part of the contents of the files in question shall be liable to dismissal by his chief, without prejudice to the other penalties provided in the Penal Code.

Article 5. The incompatibility laid down in article 7 of Law No. 5 of 1947 for members of the board and the managers of credit institutions and stock exchanges is extended to the chairmen, directors, managers, legal representatives, and members of the boards of enterprises engaged in the production, supply, distribution or consumption of the same goods or the supply of the same services, provided that the assets of such enterprises, jointly or severally amount to 20 million pesos or more.

Additional clause. The incompatibility laid down by the present article shall not cover the chairmen, directors, managers, legal representatives or executives of insurance companies which are obliged by law to establish other companies to deal in life insurance, general insurance and capital investment.

Article 6. The chairmen, directors, managers, legal representatives, or members of the boards of industrial enterprises established in the form of joint stock companies may not distribute either directly or indirectly through a third party, goods, merchandise, articles or services produced by the enterprise concerned or its branches, or be members of any commercial enterprise whose principal activity is the distribution or sale of such goods, merchandise, articles or services.

The aforesaid incompatibility extends to officials of any limited liability company whose members include other companies so that the total number of natural persons concerned exceeds twenty (20).

Additional clause 1. The prohibition contained in this article extends to the parents, spouses, brothers, sisters and children of such officials.

Additional clause 2. Enterprises shall have a period of eighteen months in which to comply with the provisions of this article.

Article 7. Any industrial enterprise which establishes or has established a direct distribution system for its products or an indirect system through independent or subsidiary commercial companies may not sell its goods, merchandise or products by any arrangement which amounts to unfair competition with independent traders dealing in the same goods or products.

Article 8. A commercial enterprise may not adopt any practice, method or arrangement which tends to monopolize distribution, or engage in acts of unfair competition to the prejudice of other traders.

Article 9. If an industrial enterprise fixes retail prices to consumers, neither the said enterprise, whether directly or through subsidiaries or distributors, nor any independent trader, may sell the goods concerned at different prices from those fixed by the producer; any person infringing this provision shall be liable to the penalties prescribed for cases of unfair competition.

Article 10. Unfair competition means any act or deed contrary to commercial good faith and to the honourable and normal conduct of industrial, commercial, handicraft or agricultural activities.

Article 11. Acts of unfair competition shall include those referred to as such in international conventions and treaties, and in particular the following:

1. Any measures or arrangements calculated to cause confusion with a competitor or his business establishments, products or services;

2. Any measures or arrangements calculated to discredit a competitor or his business establishments, products or services;

3. Any measures or arrangements calculated to bring about the internal disorganization of a competing enterprise or to obtain its business secrets;

4. Any measures or arrangements calculated to divert custom through acts inconsistent with the normal and fair operation of the law of supply and demand;

5. Any measures or arrangements calculated to cause general disorganization of the market;

6. False indication of origin and quality of products and spurious claims to honours, awards or decorations;

7. Any activities of the same kind as those carried on by the enterprise to which they belong engaged in by members, directors or other officers of the enterprise when such activities are prejudicial to the aforesaid enterprise in that they are inconsistent with good faith and the honourable and normal conduct of business.

Additional clause. Any damage caused to a third party by any of the practices, methods or arrangements prohibited by this law or by acts of unfair competition shall give rise to an action for damages by the normal procedure.

Article 12. The Ministry of Development may, ex officio or on information received, initiate through the Banking Control Board, the Joint Stock Companies Control Board or the Co-operatives Control Board, investigations of breaches of this law. If none of the above bodies is responsible for supervision of the enterprise concerned, the investigation shall be carried out by the Ministry of Development. The information shall be accepted by the Ministry provided it is properly supported and accompanied by a summary of evidence.

Article 13. The investigation, of a strictly confidential nature, shall be carried out by means of demands for information on production, imports, use of domestic and foreign raw materials, and distribution and sales systems, by visits to the enterprise concerned and, in general, by the assembly of all the necessary evidence.

A copy of the findings of the investigation shall be furnished for a reasonable period, up to 30 days, to the enterprise investigated and to any enterprise implicated in the course of investigation, in order that it may answer any charge made against it.

Article 14. When this period has elapsed, the file shall be passed to the Ministry of Development which, after consultation with the Council for Economic Policy and Planning, may impose the following penalties:

(a) withdrawal of the enterprise's shares from the stock market;

(b) in the event of a second breach of this law, closure of the enterprise.

In addition to these penalties, a fine of up to 500,000 pesos may be imposed, payable to the National Treasury, according to the seriousness of the offence.

Article 15. The decision of the Ministry of Development shall be subject to appeal to the Board of Economic Control, the result of which exhausts the administrative procedure.

Article 16. In the case of the penalties provided in article 14, sub-paragraph (b), execution shall automatically be suspended on submission of an application to the Council of State for a ministerial decision.

Article 17. Pursuant to article 52 of the National Constitution, the Executive Authority may regulate prices for the purpose of protecting the interests both of consumers and of producers and traders. Prices for the goods or services of an enterprise under investigation may be fixed by the Government, as one of the measures to be taken arising out of the investigation carried out under the present law.

The State may also:

(a) fix a time-limit for the cessation of the prohibited practices, methods or arrangements;

(b) place the enterprise or enterprises whose practices are being investigated under the supervision of the appropriate control body, for a specific period, with regard to its production, costs, distribution and prices policies, for the sole purpose of ensuring that the enterprise or enterprises accused do not continue to engage in the restrictive business practices which prompted the investigation.

Article 18. Auditors or inspectors shall exercise close supervision in order to ensure strict compliance with the present law.

Article 19. Any agreement, convention or operation prohibited by this law shall be null and void by reason of its illicit purpose.

Article 20. This law shall come into force on ratification.

COLOMBIA

DECREE NO. 1,302 of 10 JUNE 1964 REGULATING LAW NO. 155

Article 1. For the purposes of the paragraph of article 1 of Law No. 155 of 1959 (I), by basic sectors of production of goods or services of importance to the general economy and social welfare shall be understood all those economic activities which are, or may be in the future, of fundamental importance for a rational structuring of the economy of the country and the supply of goods or services essential to the general welfare, such as:

(a) the production and distribution of goods to meet the food, clothing, health and housing requirements of the Colombian people;

(b) the production and distribution of fuels and the provision of banking, educational, transport, electric power, water supply, telecommunications and insurance services.

Article 2. In performing the functions dealt with in this Decree, the Executive Director of the Board of Economic Control shall be guided by the following data, which shall be supplied half-yearly by enterprises subject to control

(a) Balance sheets with annexes showing the financial position, volume of industrial and commercial operations, and profits as a percentage of capital invested;

(b) Vouchers showing net production and distribution costs, reserves allocated for the amortization of capital investments, and any other kind of reserves;

(c) Prices of goods produced or distributed and the scales of discounts allowed to wholesalers and retailers;

(d) Samples of the articles or goods produced or distributed, for the purpose of checking their quality, weight and packaging, and conformity with the regulations governing weights and measures and classification;

(e) Vouchers showing stocks, origin and costs of raw materials and products processed, and balances in hand;

(f) Details of production of domestic and foreign raw materials used in industrial processing and of programmes to stimulate overall domestic production; or details of the proportion of raw materials or processed goods, of domestic or foreign origin, purchased by the distributor or used by the purveyor of services;

(g) Information on the systems of transport, distribution and sale of manufactured products or goods;

(h) Details of markets supplied and volume of sales in such markets;

(i) Figures for personnel employed, total annual salaries and wages bill, and details of welfare services provided;

(j) Description of plant used, with cost of acquisition, installation and operation, capacity, and planned extensions and improvements;

(k) Details of total national departmental and municipal taxes paid annually;

(l) Outline of distribution systems, with details from the enterprise concerned; and

(m) Any further documents and information that may be requested by the Executive Director of the Board of Economic Control in cases where the data listed above prove insufficient by reason of the nature of the enterprise and of the problems of supervision.

Article 3. The Executive Director of the Board of Economic Control shall analyse all the data listed, in order to establish whether the enterprise or enterprises in question affects or affect without good cause the interests of the branch of industry or commerce concerned, in which case he may require them to comply with such obligations as he considers necessary for control purposes and to adopt practices and methods consistent with equity and the legitimate interests of producers and consumers. If it emerges from the investigation that the enterprises are not prejudicing the interests of the branches concerned, the Executive Director of the Board of Economic Control may place it under the régime of limited supervision.

Article 4. The Executive Director of the Board of Economic Control may delegate the supervisory and control functions referred to in the present Decree to the Governors of Departments or the Mayors of districts with more than 25,000 inhabitants. Governors may, in turn, delegate these duties to any subordinate of theirs, if so authorized by the Executive Director of the Board of Economic Control.

Article 5. For the purposes of article 4, paragraph 1, of Law No. 155 of 1959 (I), it is presumed that a juridical-economic concentration tends to lead to undue restriction of free competition:

(a) when it has been preceded by private agreements between the enterprises concerned with a view to unifying prices and imposing them on producers of raw materials or consumers, or apportioning markets among themselves, or limiting the production, distribution or provision of a service;

(b) when market conditions for the goods or services in question are such that the merger, consolidation or integration of the enterprises which produce or distribute them may lead to unfair prices to the prejudice of competitors or consumers.

Additional clause. In conformity with the provisions of article 4 of the same law, "assets, joint or several," means the gross assets of the enterprises projecting a merger or integration.

Article 6. For the purposes of the presumptive authorization established in article 4, paragraph 2, of Law No. 155 of 1959 (I), the period of thirty days shall begin to run from the date on which the notification of projected merger, consolidation or integration came before the Executive Director of the Board of Economic Control. This date shall be entered in the register which the Board of Economic Control shall keep for this purpose.

Article 7. If the information supplied with the notification is insufficient to enable the Executive Director of the Board of Economic Control to take a definite decision, the period of thirty days referred to in the preceding article shall not begin to run in favour of the enterprise concerned until the date of expiry of the time-limit set by the said official for submission of the information.

Article 8. If the Executive Director of the Board of Economic Control objects to a projected merger, consolidation or integration operation, not because it is likely to place an undue restriction on free competition but for any other of the reasons set out in article 1 of Law No. 155 of 1959 (I), or because he has not been supplied with the necessary information on the antecedents, modalities and purposes of the operation, his decision may be taken without prior consultation with the Planning Department.

Article 9. Any application for authorization to carry out a juridical-economic concentration of enterprises shall be accompanied by the following information:

(a) Certificate from the Secretary of the Board of Economic Control that none of the enterprises concerned has been penalized or censured for engaging in restrictive business practices;

(b) Operating capacity and markets supplied by the enterprises involved;

(c) Operating arrangements in general and, specifically, with regard to transport distribution and sales, of the enterprises involved;

(d) Certificate from the Secretary of the Board of Economic Control of the submission of the necessary documents with respect to the half-year preceding the date of the application in accordance with the provisions of article 2 of Law No. 155 of 1959 (I);

(e) Copy of the articles of association of each of the companies concerned and of any amendments to such articles, registered as required by law, together with the certificate of accreditation by the Chamber of Commerce, or appropriate body, of the company's authorized agents in the case of juridical persons; or, in the case of natural persons, a certificate of the Chamber of Commerce that the enterprise is entered in the public register of commerce;

(f) A copy of the most recent balance sheet of each enterprise, duly authenticated;

(g) In the case of companies, a complete set of the minutes recording the authorization for a merger, consolidation or integration granted by the respective general meetings of members and boards of directors, or, in the case of privately owned enterprises, a registered copy of the documents containing the agreement on the terms of the merger, consolidation or integration;

(h) Any other information that may be requested by the Executive Director of the Board of Economic Control if he considers that the information provided for by this article is insufficient.

Article 10. The submission of any documents or reports which the Executive Director of the Board of Economic Control may require in order to reach a decision on any of the matters referred to him for consideration shall be governed by an order laying down the appropriate time-limit, under penalty of a fine of up to 10,000 pesos. Any enterprise failing to comply with the provisions of article 2 of this Decree shall be liable to the same penalty.

Article 11. Any authorization that the Executive Director of the Board of Economic Control may issue for the merger, consolidation or integration of industrial or commercial enterprises may be temporarily suspended or even rescinded by him, ex officio or at the request of any citizen, if it appears that the new juridical-economic organization has violated Law No. 155 of 1959 (I).

Article 12. Any industrial consortia that existed before the promulgation of Law No. 155 of 1959 (I) and any juridical-economic concentrations organized after its entry into force without the authorization of the Board of Economic Control shall submit to the Executive Director of the Board, within ninety (90) days following the entry into force of the present Decree, the documents required under article 10 of the present Decree, and shall need the authorization of the aforesaid Director in order to continue to operate.

Article 13. For the purpose of checking the incompatibilities laid down by article of Law No. 155 of 1959 (I), every industrial or commercial enterprise subject to State supervision shall submit annually to the Board of Economic Control a list of the members of its board of directors, its authorized agents, executive and management staff.

Article 14. Maintenance of retail prices to consumers, as provided for by article 9 of the above Law, includes the retail price both of manufactured products and articles and of any accessories or additional parts essential for their use or operation.

Article 15. Any information alleging violation of Law No. 155 of 1959 (I) may be laid with the Board of Economic Control either orally or in writing; it shall state precisely both the name and office or business address of the person or persons involved and the acts constituting the violation.

Article 16. The findings referred to in article 13 of Law No. 155 of 1959 (I) shall be furnished within fifteen days from the date on which the information was submitted or should have been submitted.

Article 17. The Executive Director of the Board of Economic Control shall initiate and carry through any investigation that he does not delegate to one of the bodies mentioned in article 12 of Law No. 155 of 1959 (I); he shall exercise supervision over any investigation by the said bodies and take over direct responsibility for it whenever he considers that desirable.

Article 18. The Board shall allow the Planning Department a reasonable time-limit, not exceeding 30 days, in which to give its advisory opinion, after which the Board shall proceed to deliver its decision.

Article 19. Decisions of the Executive Director of the Board of Economic Control are open to appeal in accordance with the provisions of article 3 of Decree No. 3307 of 1963.

CHILE

LEGISLATIVE DECREE NO. 211 OF 17 DECEMBER 1973
ESTABLISHING REGULATIONS FOR THE PROTECTION OF FREE COMPETITION

Title I

GENERAL PROVISIONS

Article 1. Any person who, jointly or severally, executes or concludes any deed, arrangement or agreement tending to impede free competition in production or in domestic or foreign trade shall be punished by a term of imprisonment (*presidio menor*) of the appropriate degree.

If the offence involves essential goods or services such as food, clothing, housing, medicaments or health, the penalty shall be increased by one degree.

Article 2. For the purposes of the previous article, the following shall be considere among others, as deeds, arrangements or agreements tending to impede free competition:

(a) those relating to production, such as the allocation, reduction or freezing of quotas;

(b) those relating to transport;

(c) those relating to trade or distribution, whether wholesale or retail, such as the allocation of quotas or the assignment of exclusive market or distribution areas to a single person or body, for the same article produced by several manufacturers;

(d) those relating to the fixing of prices of goods and services, such as price maintenance agreements or resale price conditions; and

(e) in general, any other expedient designed to eliminate, restrict or obstruct free competition.

Article 3. In the case of artificial persons and without prejudice to the criminal liability incurred by their legal representatives or by natural persons who have acted for them, orders may be given for the dissolution of companies, corporations and other artificial persons under private law.

In the case of a company or the subsidiary of a foreign joint stock company, the sentence imposing the penalty provided for in the present article must be entered in the relevant Trade Register and published once in the Official Gazette.

Article 4. No monopoly concession may be granted to private individuals for the exercise of economic activities in such sectors as the extractive and manufacturing industries, trade, or the service industries.

A monopoly of specific activities such as those mentioned in the previous paragraph may not be granted to any State, semi-State, public, independent or municipa institution except by special enactment.

Notwithstanding, provided the national interest so requires, authorization may be given by Supreme Decree with supporting reasons, after receipt of a favourable report from the Supervisory Board set up under the present Legislative Decree, for the conclusion or maintenance of such agreements or contracts as, though mentioned in the previous article, may nevertheless be necessary for the stability or development of national investments or may be agreements or contracts to which one of the institutions mentioned in the first and second paragraphs of article 16 of Law No. 10336 is a party.

Article 5. Without prejudice to the contents of the present Legislative Decree, the existing legal provisions and regulations relating to intellectual and industrial property, mining - especially petroleum production, trade in and distribution of nitrate, iodine and copper; those contained in the Health Code; those contemplated by the Law on Alcohol and Alcoholic Beverages; those governing the establishment and operation of public or municipal service undertakings; and those relating to banking, insurance, reinsurance and the stock exchanges, also to transport, chartering, coastal shipping, auction sales and pawnbroking, shall remain in force.

The legal provisions and regulations investing the authorities with powers relating to the exercise of economic activities, including those which relate to the fixing of maximum prices and their enforcement, shall likewise remain in force.

No government monopoly shop may be established, even by virtue of the provisions of the two preceding paragraphs, without a prior favourable report from the Supervisory Board.

The Supervisory Board may apply for an amendment of or derogation from the rules laid down in the present article if it considers that they restrict or destroy free competition and are thus prejudicial to the general interest.

Article 6. The following bodies and services shall be set up for the prevention, investigation, prosecution and punishment of offences against free competition:

(a) The Provincial Preventive Committees;
(b) The Central Preventive Committee;
(c) The Supervisory Board;
(d) The Office of the Public Prosecutor.

Title II

CONCERNING THE PROVINCIAL AND CENTRAL PREVENTIVE COMMITTEES

Article 7. Every provincial capital shall have a Provincial Preventive Committee, to be composed of the following persons:

(a) The Governor of the Province or his deputy, a public official, who shall be chairman;

(b) The Head of the Provincial Office of the Department of Industry and Trade;

(c) The Receiver in Bankruptcy of the capital of the Province, if there is one; if not, a lawyer to be nominated by the Governor;

(d) The senior agronomist of the State bodies with offices in the Province or if two or more have equal seniority, the oldest;

(e) The Chairman of the Provincial Council of the National Register of Traders, Small Manufacturers and Artisans of Chile; and

(f) A consumers' representative nominated by the Presidents of the Unions of Neighbourhood Associations of the Province from among their members and elected by majority vote, to hold office for two years.

Members sitting on the said Committee in their official capacity shall be replaced, in case of absence, by their legal deputies. For other members an incumbent and an alternate shall be nominated.

If both the Governor and his deputy are absent the person indicated in sub-paragraph (b) of the present article shall take the chair, and thereafter in succession.

Four members shall constitute a quorum and decisions shall be taken by simple majority vote. In the event of a tie, the Chairman shall have a casting vote.

Article 8. The Provincial Preventive Committees shall have the following powers and functions:

(a) To advise on existing agreements or contracts which might violate the provisions of the present Legislative Decree;

(b) To give a decision in answer to inquiries regarding proposed agreements or contracts as to whether they might affect free competition;

(c) To ensure the observance within their respective jurisdictions of condition of free competition and to take cognizance, *ex officio* or at the request of a third party, of any situation which might affect it;

(d) To apply to the Office of the Public Prosecutor for the investigation of agreements that are incompatible with free competition;

(e) To request the assistance of any official of a public body or service or of any enterprise, entity or company to which the State contributes directly or indirectly, or in which it is represented or participates; or of any municipality; and

(f) To decide, at the request of the Office of the Public Prosecutor, on one of the following preventive measures:

1. To suspend, for up to fifteen days, the application of any agreement for the allocation of production or distribution quotas or market areas or any other kind of agreement which demonstrably involves one or more of the acts described in articles 1 and 2.

   Such suspension may be renewed, once only and for the same period, on the application of the Public Prosecutor.

2. To fix maximum prices within its jurisdiction for the goods and services under investigation, for a period of up to fifteen days, which the Committee itself may extend for an equal period, by decision with reasons given; and

(g) On the application of the Public Prosecutor, to request the Ministry of Economic Affairs, Development and Reconstruction or any other public body or service, to use its regulatory preventive powers in the field of economic activities to prevent any harmful effects from the acts under investigation.

Article 9. An appeal against any preventive decision or measure agreed upon by a Provincial Committee may be lodged within three working days with the Central Preventive Committee only.

The appeal, which shall not have the effect of suspending the operation of the disputed decision, shall be laid before the Provincial Preventive Committee, which shall return it with a report setting out the allegations in the case, within three days.

The Central Committee shall decide the appeal within thirty days from the expiry of the period allowed for review of the case.

If it fails to reach a decision within the specified time, the appeal shall be considered as allowed, without prejudice to the provisions of article 14.

Article 10. The Central Preventive Committee shall be composed of:

(a) the Public Prosecutor of the Department of Industry and Trade;

(b) a university professor of Economic Law, appointed by the Council of Rectors;

(c) a delegate of the Ministry of Economic Affairs, Development and Reconstruction;

(d) a representative of the Ministry of Agriculture;

(e) a representative of the Confederation of Production and Trade, appointed by it;

(f) a representative appointed by the Minister for Economic Affairs on the proposal of the Confederation of Retail Traders and Small Manufacturers of Chile and of the Single Confederation of Small and Artisan Industry; and

(g) a consumers' representative nominated by the Presidents of the Unions of Neighbourhood Associations of the Province of Santiago from among the members and elected by majority vote, to hold office for two years.

Members sitting on the Committee in their official capacity shall be replaced, in case of absence, by their local deputies, and an alternate shall be nominated for the others.

The Public Prosecutor of the Department of Industry and Trade or his deputy shall take the chair, or, if both are absent, the next government official in the order indicated.

Five members shall constitute a quorum and decisions shall be taken by simple majority vote, the Chairman having a casting vote in the event of a tie.

Article 11. The main functions of the Central Preventive Committee shall be as follows:

1. To settle complaints with respect to advice given by the Provincial Preventive Committees;
2. To take cognizance of complaints against preventive measures ordered by the Provincial Committees; and
3. To act as Preventive Committee for the Province of Santiago, with all the powers conferred by article 8.

In the latter case there shall be no appeal against decisions of the Central Preventive Committee.

Article 12. There shall be no right of administrative or judicial appeal whatsoever against decisions of the Central Preventive Committee, even to the Committee itself.

Article 13. The decisions and agreements of the Provincial Committees and of the Central Commission shall not prevent the Supervisory Board and the Office of the Public Prosecutor from exercising their powers as appropriate.

Article 14. Agreements or contracts executed or concluded in accordance with the decisions of the Provincial or Central Preventive Committees shall not give rise to any liability unless, at a later date, on the basis of new evidence, they are declared to be incompatible with free competition either by those Committees or by the Supervisory Board, after the decision with respect to their status has been notified or published.

Article 15. The Provincial Preventive Committees shall meet at the office of the Governor or at the place of their choice, with the approval of the Governor.

Their expenses shall be defrayed by the Office of the Governor, which shall appoint one or more public officials to provide them with administrative services, without entitlement to additional remuneration.

The Central Preventive Committee shall meet at the Office of the Public Prosecutor, the secretariat of which shall provide them with administrative services.

Title III

CONCERNING THE SUPERVISORY BOARD

Article 16. The Supervisory Board shall consist of the following persons:

(a) A Judge of the Supreme Court, appointed by it as Chairman;
(b) The National Director for Industry and Trade;
(c) The Chief Inspector of Insurance Companies, Joint Stock Companies, and Stock Exchanges;
(d) The Chief Inspector of Banks;
(e) The National Director of the Internal Revenue Service; and
(f) The Chief Receiver in Bankruptcy.

If the person indicated in sub-paragraph (a) is unable to serve, the Supreme Court shall nominate another of its members to replace him.

The other members of the Committee shall be replaced by the officials who deputize for them in their respective posts.

The duties of Secretary of the Committee shall be performed by whoever performs similar duties in the Office of the Public Prosecutor as described in Title IV of the present Legislative Decree, and a lawyer from the same office shall be Rapporteur for the proceedings of the Committee.

Article 17. The Supervisory Board shall supervise the proper application of the rules contained in the present Legislative Decree and the satisfactory performance of the bodies it establishes, and shall issue general instructions for their guidance. Its agreements or decisions shall be binding on the Preventive Committees.

The duties and powers of the Supervisory Board shall be:

(a) To take cognizance, on the application of the Public Prosecutor, of situations which might lead to violations of the present Legislative Decree, and to decide according to the case;
    1. to amend or terminate all contracts, agreements, or arrangements incompatible with the provisions of the present Legislative Decree;

2. to order the amendment of the articles of association or the dissolutio of companies, corporations and other artificial persons in private law which have taken part in the contracts, agreements, or arrangements referred to in the previous sub-paragraph;
3. to declare those responsible temporarily (for from one to five years) disqualified from holding administrative posts in professional associations or trade union institutions.
4. to impose fines of up to a sum equivalent to 150 annual minimum wage units, scale (A) of the Department of Santiago, to be applied to the purpose mentioned in article 20. The amount of the fine shall be fixed at the discretion of the Board according to the working capital of the offender and the gravity of the offence, and particularly the damage inflicted on the community;
5. to order the Public Prosecutor to institute criminal proceedings for any of the offences referred to in articles 1 and 2;

(b) To issue general instructions to guide private individuals making agreements or contracts which might be prejudicial to free competition;

(c) To provide information in relation to articles 4 and 5;

(d) To apply for an amendment of or derogation from the legal rules and regulations referred to in the final paragraph of article 5.

Article 18. The Supervisory Board shall examine the evidence and, after considering all the facts, shall take decisions by majority vote, the Chairman having a casting vote in the event of a tie. Four members shall constitute a quorum, one of whom shall be the Judge of the Supreme Court.

The Commission may sit in the Courts of Justice or on Government premises, as decided each year at its first meeting.

Decisions of the Supervisory Board shall be notified to the persons concerned, or to the complainant should there be one, by the Secretary or other authorized official or by notice published once only in the Official Gazette.

There shall be no right of administrative or judicial appeal whatsoever against decisions of the Board, even to the Board itself, except in the cases provided for in the following article.

Article 19. An appeal may be lodged only against decisions of the Supervisory Board ordering the dissolution of artificial persons, disqualification from holding certain posts in professional associations or trade union institutions, or the imposition of fines.

Any such appeal shall be heard by one of the courts of the Supreme Court after review by the Public Prosecutor of the Court. It must be lodged within ten working days after notification and shall have precedence in the list of cases for hearing. The hearing may not be suspended once it has begun and judgment shall be given after full consideration of the facts.

Article 20. Fines imposed by the Supervisory Board must be paid within ten working days following the date on which the operative decision took effect.

Before an appeal as described in the preceding article can be accepted, fifty per cent of the fine must be deposited with the Court, not including legal charges.

The Committee shall open a special account with the State Bank of Chile for payments and deposits referred to in the preceding paragraph.

Should the person concerned not pay the fine, he shall be given in lieu a term of imprisonment of one day for every monthly minimum wage unit, which shall be inflicted without any court hearing and solely on the application of the Committee, by the Judge of the Criminal Court of the domicile of the offender or offenders.

The proceeds of fines shall be devoted to works for the benefit of the community, preferably in the province in which the offence was committed, after a report by the appropriate Provincial Preventive Committee and in accordance with the corresponding regulations.

Title IV

CONCERNING THE OFFICE OF THE PUBLIC PROSECUTOR

Article 21. The Office of the Public Prosecutor shall be in Santiago and shall be independent of all other bodies or services. Its head shall be the Public Prosecutor who must be a lawyer qualified at least five years prior to his appointment.

The Public Prosecutor shall be appointed by the Supervisory Board, shall be guided by the rules laid down in the Administrative Statutes, and may not be removed or penalized except by the Board, on the proposal of the Comptroller-General of the Republic and after indictment by the Board.

Article 22. Each provincial capital of the Republic shall have a Deputy Public Prosecutor who, in the performance of his duties, shall be answerable to the Public Prosecutor. The duties of Deputy Public Prosecutor shall be performed by the Provincial Director of the Department of Industry and Commerce, without extra remuneration.

Article 23. The staff of the Office of the Public Prosecutor shall be appointed by the Public Prosecutor and shall be answerable to him.

Without prejudice to the power of the Attorney-General to engage staff at certain grades or in certain categories or for special fees, the permanent nucleus shall consist of the following officials:

Public Prosecutor:	First category Permanent Professional and Technical Senior Staff, Decree Law of May 1959;
Secretary-General (Lawyer):	Second category Permanent Professional and Technical Senior Staff;
Two lawyers:	Third category Permanent Professional and Technical Senior Staff;
Three Administrative Officials:	Fifth category Permanent Administrative Staff.

The Ministry of Economic Affairs, Development and Reconstruction shall advise as to what funds are required for the operation of the Office of the Public Prosecutor and the payment of staff, and the Budget Office of the Ministry shall be responsible for such payment.

Salaries of the staff of the Office of the Public Prosecutor shall be on the same basis as those of the Ministry of Economic Affairs, Development and Reconstruction.

The Public Prosecutor shall not be entitled to engage staff listed in the second paragraph above until the necessary expenditure has been authorized by the Ministry.

Article 24. In the exercise of his functions, the Public Prosecutor shall not be answerable to any of the authorities or courts before which he is called upon to exercise them. He may therefore defend the interests entrusted to him in whatever form he deems most appropriate in law.

The powers and duties of the Public Prosecutor shall be:

(a) To institute such investigation as he deems expedient to establish violations of the present Legislative Decree, either *ex officio* or on the application of some other authority or person.

The Director of Investigations shall be obliged to place at the disposal of the Public Prosecutor whatever members of his staff may be required to carry out these duties:

(b) To appear as a party representing the general interests of the community before the Supervisory Board and the Courts of Justice with all the duties and powers appertaining to him in that capacity.

In the Supreme Court the Public Prosecutor may defend or attack decisions of the Supervisory Board.

Where investigations have been made by a Deputy Public Prosecutor and charges brought by him, the Public Prosecutor may either take them over in the performance of his functions as prosecutor before the Supervisory Board, or reject them for reasons stated.

(c) To require the Supervisory Board or the Preventive Committees to exercise some particular power;

(d) To ensure full and faithful compliance with the decisions and instructions of the Supervisory Board or the Courts of Justice in matters dealt with in the present Legislative Decree.

(e) To request the Provincial Committees to take preventive measures in the light of the investigations pursued by his Office.

(f) To prepare reports requested by the Provincial Preventive Committees, the Central Preventive Committee and the Supervisory Board.

(g) To request the assistance of any official of a public body or service, or any enterprise, entity or company in which the State or any of its agencies, entities or companies has an interest, representation or share, or any municipality.

(h) To require any body or service referred to in sub-paragraph (g) to place at his disposal any information he deems necessary for investigations, charges or proceedings in which he is already engaged or in which it is his duty to take part.

The Public Prosecutor may also call for an examination, by the appropriate officials, of any documents, accounts or other papers he may deem necessary.

The Public Prosecutor and the officials responsible for making further investigations may communicate any information obtained only to the Supervisory Board, the Preventive Committees and the Courts of Justice.

Any person obstructing the investigations referred to in these provisions shall be liable to detention for up to fifteen days. Should the obstruction continue, the offender shall be punished by a term of imprisonment (presidio menor) of the appropriate degree. If he is a public official, he shall also lose his employment.

Warrants for arrest and criminal proceedings, if any, shall be issued and instituted, respectively, by a lawyer Judge of the criminal court who is competent under the general rules, on the application of the Public Prosecutor:

(i) To ask private individuals for any information and earlier details which he may deem necessary for his investigations; and

(j) To institute criminal proceedings, either himself or by delegation, when so ordered by the Supervisory Board, in accordance with article 17, sub-paragraph (a) 5.

Article 25. The powers and duties of the Deputy Public Prosecutors in their respective provinces shall be those described in sub-paragraphs (a), (c), (d), (e), (g), (h) and (i) of the preceding article, xcept for the requirement of the Supervisory Board referred to in sub-paragraph (c) and any other powers specially delegated by the Public Prosecutor.

To assist him in the discharge of his duties, a Deputy Public Prosecutor may call for the advice of the lawyer member of the appropriate Provincial Preventive Committee, who shall be required to give such advice.

Article 26. The Public Prosecutor may delegate the conduct of the criminal proceedings before the Courts of justice to lawyers of his Office, to Provincial Deputy Public Prosecutors, to prosecuting counsel of the State Council of Defence, or to lawyer members of the Provincial Preventive Committees.

Article 27. The Public Prosecutor may, whenever he deems it necessary, either himself or by delegation, resume the representation of his Office in any case before the Courts and likewise intervene in any legal formalities or proceedings.

Article 28. The Office of the Public Prosecutor shall be exempt from taxes under the Seals, Stamps and Stamped Paper Law on the legal documents it needs when appearing before the Commissions and Courts, and lawyers acting on its behalf shall be entitled to appear in person before the higher Courts.

Article 29. The Preventive Committees and the Office of the Public Prosecutor referred to in the foregoing articles shall receive and investigate, as appropriate all informations lodged by private individuals respecting agreements or contracts which may involve a breach of the rules laid down in the present Legislative Decree.

Article 30. Members of the Preventive Committees and of the Supervisory Board, whatever their status, shall be covered by the provisions of article 260 of the Penal Code.

The said members shall not be entitled to special remuneration.

Title V

CONCERNING CRIMINAL PROCEEDINGS

Article 31. Criminal proceedings for the offences punished under the present Legislative Decree shall be governed by the usual procedures for ordinary criminal offences, subject only to the following modifications:

Article 32. Proceedings may be initiated only on an accusation or complaint by the Public Prosecutor, himself or by delegation, and only after previous application to the Public Prosecutor by the Supervisory Board.

Article 33. The preliminary investigation must be concluded within sixty days, but may be extended once only for up to a further thirty days if the Judge considers that essential for the successful conclusion of the investigation, in which case he must give his reasons in writing and communicate them to the appropriate Court of Appeal.

Article 34. The representative of the Office of the Public Prosecutor may take cognizance of the findings of the preliminary investigation or of any report contained in it.

Article 35. The Courts of Justice shall consider the evidence in good faith.

Article 36. All acts performed by virtue of a specific arrangement or agreement punishable under articles 1 and 2 shall be treated as a single offence.

Article 37. A Judge of the appropriate Court of Appeal shall be deemed competent to hear the case at first instance, sitting as a one-man court.

In such cases offender and accomplices shall not be granted provisional release until a final verdict at first instance of acquittal or dismissal of the case has been given and in that case the penultimate and final paragraphs of article 363 of the Code of Penal Procedures shall not apply.

Title VI

FINAL PROVISION

Article 38. Within a period of three months from the date of publication of the present Legislative Decree, any person shall be entitled to submit to the appropriate Provincial Preventive Committee any contract, arrangement or agreement executed or concluded prior to that date and currently in force, so that the Committee may decide whether its renewal, continuation or maintenance would involve the destruction or obstruction of free competition in any of the forms punishable under articles 1 and 2.

The decision of the Committee, in the case referred to in the previous paragraph, may be appealed against to the Central Preventive Committee, as provided in article 9, without prejudice to the decision which the Supervisory Board may take in due course.

If by the end of the period of three months referred to in the first paragraph no such consultation as is there provided for has taken place, the continuation or maintenance of understandings, contracts, arrangements or agreements executed or concluded prior to the entry into force of the present Legislative Decree and which destroy, impede or obstruct free competition as provided in articles 1 and 2, shall be considered for all legal purposes as the execution or conclusion of the same, and their authors and instigators shall incur the corresponding criminal, civil and administrative liability.

MEXICO

ORGANIC LAW IMPLEMENTING ARTICLE 28 OF THE CONSTITUTION CONCERNING MONOPOLIES

(Official Gazette of 31 August 1934, amended in
Official Gazette of 10 January 1942 and 31 December 1952)

Article 1. Monopolies and monopoly shops (estancos) are prohibited by the terms of article 28 of the Constitution.

Article 2. Monopoly shop (estanco) means a monopoly established in favour of the State to procure funds for the Treasury.

Article 3. For the purposes of the present law, a monopoly means an industrial or commercial concentration or control, or any deliberately created situation which enables one or more persons to fix the price of goods or the provision of services to the prejudice of the public in general or a social class in particular.

Article 4. In default of evidence to the contrary, there shall be presumed to be a monopoly when:

(i) There is concentration or control of the production or distribution of essential consumer goods;

(ii) There is an agreement, neither authorized nor approved by the State, between producers, manufacturers, merchants or purveyors of services which enables them to fix the price of goods or services; and

(iii) There is a deliberately created situation in commerce, manufacture or the service industries which enables them to fix the price of goods or services.

Article 5. There shall be presumed to be a tendency to monopoly when:

(i) Goods are sold or services provided at less than the cost of production, except where:

(a) a new product or service is being launched and prior authorization has been obtained from the Federal Executive;

(b) the market price of the goods or services has fallen, unless the fall has been deliberately brought about by the sellers of the goods or the purveyors of the services concerned,

(c) the sale is by public auction or of bankrupt stock or in other circumstances necessitating such sale.

(ii) Goods are imported which, by reason of the conditions in which they are produced, can be sold in the country at unfair prices;

(iii) Goods are deliberately destroyed by producers or merchants without the authorization of the Federal Executive when such destruction may bring about a shortage or rise in prices;

(iv) Commercial selling schemes are based on lotteries, without the authorization of the Federal Executive as required by the present law;

(v) Discounts are given to consumers in the form of vouchers, coupons, counterfoils or such like, entitling the holder to an amount of money or goods, without regard to the rules laid down in the present law.

Article 6. The presumptions referred to in article 4 shall not apply to:

(i) Concessionary public service enterprises which charge officially approved rates;

(ii) Enterprises in which the State is a shareholder or partner.

Article 7. When there is a de facto industrial or commercial concentration or control, or a situation not deliberately created, which enables one or more persons to fix the price of goods or the provision of services to the prejudice of the public in general or a social class in particular, the Federal Executive shall be empowered, after consulting the National Economic Council to:

(i) Fix maximum prices for goods or services;

(ii) Compel holders of stocks of goods to put them on sale at prices not exceeding the maximum as fixed above;

(iii) Compel purveyors of services to provide the public with services considered essential, in the light of the situation of the enterprises and of the prices fixed, and

(iv) Promote and encourage the establishment of similar undertakings or industries with the help of appropriate subsidies or franchises.

Article 8. In the case of essential consumer goods, the Federal Executive may take the measures referred to in the previous article when, in its opinion, market conditions so require.

Article 9. The regulations issued under the present Law shall determine what are to be considered essential consumer goods.

Article 10. In fixing the maximum prices referred to in sub-paragraph (i) of article 7, account shall be taken of the economic characteristics of the industries, such as capital investment, usual periods of amortization or rates of plant depreciation, working capital, distribution and sales arrangements and conditions, etc.

Article 11. No prohibitions shall be imposed under the pretext of protecting industry.

Article 12. The preceding article shall not apply to the following measures which the Federal Executive may adopt on the advice of the National Economic Council:

(i) Control of the establishment of new businesses in specific branches of production where there is a danger that excessive competition may lead to a reduction of workers' wages or be prejudicial to the public in general or a social class in particular;

(ii) Restriction of the production of specific goods when output exceeds domestic and foreign demand and may lead to an overproduction crisis, to the prejudice of the public in general or a social class in particular;

(iii) Prohibition of the use of essential consumer goods for purposes other than those for which they are normally intended, if such use may lead to a market shortage and higher prices;

(iv) Prohibition of industrial integration if there is a risk of it leading to a monopoly or serious economic disruption;

(v) Prevention of imports of the kind dealt with in sub-paragraph (ii) of article 5 of the present law. Limitation of imports and exports of specific goods when economic conditions or the implementation of international treaties or conventions so require. In such cases the limitation shall be applied to the parties concerned pro rata.

Article 13. Exemption from taxes is when a particular person is relieved, totally or partly, from payment of a tax which in similar circumstances is applicable to all other taxpayers, or when taxes which have already fallen due are remitted.

Article 14. It is not exemption from taxes when:

(i) Export premiums and subsidies are granted under the terms of the regulations issued under the present law to associations or co-operative societies of Mexicans organized as described in the fourth paragraph of article 28 of the Constitution;

(ii) Subsidies and prerogatives are granted to enterprises of Mexicans in the cases covered by sub-paragraph (iv) of article 7 of the present law;

(iii) Franchises and subsidies are granted in accordance with general provisions to encourage the organization of entrepreneurs and consumers, the rationalization of production, or the creation of industries declared by Federal Executive Decree to be of national importance on the grounds that they are essential to the planning of the national economy.

Article 15. Persons engaged in agricultural, industrial or trading activities or the provision of services must supply the Federal Executive with the information required for the implementation of the present law as laid down in the regulations.

Government departments also must supply the information requested from them for the same purpose.

Article 16. All officials and employees involved in the implementation of the present law and its regulations must treat as absolutely confidential any statements and information supplied by a private individual, and are forbidden to use such information for any other purposes than those required by their official duties, without the express authorization in writing of the individual concerned.

Article 17. The Federal Executive shall be empowered to set up advisory and executive bodies, which may include both Government officials and private individuals, to collaborate in implementing the provisions of the present law and its regulations.

Article 18. The Federal Executive may order inspections of producers and distributors, as provided by the respective regulations.

Article 19. (This article was amended by decree of 29 September 1941, published in the Official Gazette of 10 January 1942, and again amended by decree of 30 December 1952, published in the Gazette on the 31st of that month, and entered into force the next day, as follows:)

> "Article 19. A fine of 100 to 50,000 pesos (ONE HUNDRED TO FIFTY THOUSAND PESOS) shall be imposed by administrative action on anyone violating the prohibitions contained in article 1 of the present law; at the same time an order may be issued for the temporary closure, for 90 days, of the commercial, industrial or other establishment where the violation was committed.
>
> If the offence is repeated, the closure referred to in the previous paragraph shall be final."

Article 20. Where there is presumed to be a monopoly as defined in article 4, the parties concerned shall be allowed 30 days in which to present their defence. Should they fail to do so or their defence be found invalid, the penalties applicable in the case of a monopoly shall be imposed.

Article 21. Acts tending to the establishment of a monopoly shall be punished administratively by the same fines as in the case of a monopoly, but reduced by 50 per cent.

Article 22. (This article was amended by decree of 29 December 1941, published in the Official Gazette of 10 January 1942 and came into force the same day; it was again amended by decree of 30 December 1952, published in the Gazette on the 31st of that month, and entered into force the next day, as follows):

> "Article 22. The penalty for selling goods regarded as essential consumer goods at prices above the maximum prices fixed in accordance with article 8, or for failing to comply with the provisions of sub-paragraph (ii) of article 7 shall be as laid down in article 19, except that the fine shall be from 20 to 50,000 pesos (TWENTY TO FIFTY THOUSAND PESOS).

Article 23. (This article was amended by decree of 29 December 1941, published in the Official Gazette of 10 January 1972, and again amended by decree of 30 December 1952, also published in the Gazette on the 31st of that month, and entered into force the next day, as follows)

> "Article 23. Any private individual failing to supply the information referred to in article 15, or supplying false information, shall be fined 100 to 20,000 pesos (ONE HUNDRED TO TWENTY THOUSAND PESOS) for a first offence, and, if the offence is repeated, shall be dealt with in accordance with article 19 where it refers to the temporary or final closure of the premises."

Article 24. Any official or employee committing a breach of article 16 shall be dismissed from his post and shall incur the penalty laid down in the Penal Code for the offence of breach of secrecy.

II

EXTRACTS FROM LAWS AND REGULATIONS ON CONTROL OF ECONOMIC POWER BY CONTROL OF PRICES

(i) Argentina

(ii) Brazil

(iii) Colombia

ARGENTINA

LAW No. 19,508 OF 23 FEBRUARY 1972
PROVISIONS CONCERNING PRICES AND MARKETING

Article 1. The present law shall apply to the purchase and sale, exchange and hire of movables, works and services and raw materials thereof, intended for the health, food, clothing, hygiene, housing, cultural, transport, heating cooling, relaxation and any other common needs of the population.

Article 2. Production, marketing and distribution processes shall be supervised in order to prevent and avoid arbitrary price fixing and any harmful practices that restrict free competition. To that end, the Executive may, either directly or through the appointed body, without prejudice to any other measures laid down:

(a) Call for sworn statements;

(b) Require books or papers of all kinds to be produced or shown, examine accounts and business records, and make expert inspections of books, papers, correspondence and documents of all kinds;

(c) Demand that books be kept, with appropriate registers;

(d) Establish special registers for such purposes;

(e) Introduce trading licence systems.

Article 3. When it is necessary to ensure supplies or promote competition on the domestic market, the Executive may temporarily reduce or suspend import duties, taxes and/or charges on goods directly or indirectly covered by article 1.

Article 4. With respect to the goods and services covered by article 1, the Executive may, either directly or through the appointed body:

(a) prescribe rules governing the marketing and distribution and, in special cases, the production thereof, to ensure the observance of correct business practices;

(b) by way of exception, establish or limit profit margins and/or percentages and/or fix maximum prices;

(c) provide that State or State enterprise transport facilities shall be assigned to the carriage of goods and/or passengers.

Article 9. Any act or omission which tends to give rise to an unwarranted increase in prices, any refusal or unjustified restriction of sales or services, any intervention by middlemen not justified by correct business practices, any sale of goods at prices higher than those voluntarily set by the manufacturer for the marketing of his products under their registered trade mark, or any breach of the rules prescribed under article 4 shall render the natural or artificial persons responsible liable to the following penalties, which may be imposed separately or jointly, as appropriate:

(a) A fine of one thousand (1,000) to five hundred thousand (500,000) pesos. The latter figure may be increased up to twice the sum gained by the infringement.

(b) Detention for up to ninety (90) days;

(c) Closure of the establishment for a period of up to six (6) months, provided that, in the opinion of the appointed body, that will not affect supply.

In the case of a second offence, offenders may have their premises or factory closed down completely, be disqualified from engaging in trade and possibly lose their juridical personality.

Article 26. All goods covered by article 1 are hereby declared to be of public importance and liable to expropriation. The appointed body shall decide in each specific case what goods are to be expropriated, and shall justify its published decision on grounds of market scarcity or inadequacy of the quantity put on sale. The appointed body may take possession of the goods specified in the decision on depositing with the courts the official value if they are subject to a maximum price, or if not, the value as estimated by its own experts. If the person expropriated agrees to the expropriation, the appointed body shall make the payment direct and the amount may exceed the aforementioned value by ten (10) per cent. The expropriating authority may either sell the goods direct, hire them out, rent them or entrust them to the usual dealers in that particular category of goods. The cost of such operations shall be charged to the General Revenue.

BRAZIL

DECREE NO. 63196, OF 29 AUGUST 1968, REGULATING PRICES ON THE DOMESTIC MARKET AND ENACTING OTHER MEASURES

Article 1. The Inter-Ministerial Prices Board (*Conselho Interministerial de Preços*) (CIP) is hereby established for the purpose of laying down and enforcing the measures implementing the price regulation system provided for in this Decree in accordance with the main outlines of the economic policy of the Federal Government.

Article 2. The Inter-Ministerial Prices Board shall consist of the following members:

(i) The Minister of Finance;
(ii) The Minister of Industry and Trade;
(iii) The Minister of Agriculture;
(iv) The Minister of Planning and Over-all Co-ordination.

Paragraph 1. The Minister of Industry and Trade shall act as Chairman of the Inter-Ministerial Prices Board and shall be replaced by the Minister of Finance in the event of absence or inability to attend.

Paragraph 2. Other Ministers of State who are not members of the Board shall be invited to be present at meetings at which matters within their competence are discussed.

Paragraph 3. The decisions of the Inter-Ministerial Prices Board shall be adopted by simple majority. The Chairman shall also have a casting vote.

Article 4. The Inter-Ministerial Prices Board shall keep watch on price trends on the domestic market, at the various stages of production and marketing and in services.

Article 5. In analysing and evaluating the price trends referred to in article 4, the Inter-Ministerial Prices Board shall adopt as a basis the principle of compatibility between price trends and the corresponding changes in costs, bearing in mind the guidelines for economic policy laid down by the Federal Government and the special features of the various sectors, their profitability and their market characteristics.

Article 6. In the analysis referred to in the preceding article, special attention shall be paid to the following;

(i) the fact that goods or services have a significant effect on cost formation in the various sectors of economic activity;

(ii) the existence of structural conditions in the market that reflect monopolistic or oligopolistic situations;

(iii) anomalies in the behaviour of sectors, enterprises or establishments that may disturb price-formation mechanisms on the market.

Article 7. For the purposes laid down in the foregoing articles, the Inter-Ministerial Prices Board shall keep a statistical check on trends in the price and cost of goods and services and compile indices for each sector.

Sole paragraph. In preparing the sectoral indices referred to in this article, the essential features of the cost structure of each of the various sectors of production, marketing and services shall be taken into account, and the indices shall be used as a basis for evaluating price readjustment levels.

Article 8. The Inter-Ministerial Prices Board may require enterprises, firms or their establishments to submit confidentially, with a guarantee of secrecy, any documents, information or explanations it deems necessary for the surveillance and analysis of price trends referred to in this Decree.

Article 9. The Inter-Ministerial Prices Board may also require enterprises and establishments to submit proposed price increases beforehand, so that they can be analysed and, where appropriate, approved.

Paragraph 1. The occurrence of any of the eventualities provided for in article 6 shall constitute sufficient grounds for requiring such submission in advance.

Paragraph 2. The Inter-Ministerial Prices Board shall itself indicate which public or private organs or bodies, products or services are required to comply with the provisions of this article.

Paragraph 3. Any price readjustments not evaluated and decided on by the Inter-Ministerial Prices Board within 45 days from the date of submission of the documents and information specified by the Board as being necessary for the analysis referred to in this article shall be regarded as approved.

Article 10. In the event of price increases higher than those corresponding to changes in costs and of unjustifiable failure to comply with the requirements laid down in the foregoing articles, or when the documents or information supplied are found to be fraudulent, the Inter-Ministerial Prices Board may, where appropriate, order:

(i) the reintroduction of previous price levels;

(ii) the application by the competent public administrative departments and bodies of the appropriate administrative, fiscal and legal measures, including those provided for in Law No. 4, of 26 September 1962, and in Law No. 4137 of 10 September 1962, which regulate, respectively, intervention in the economic field and the suppression of abuses of economic power.

Sole paragraph. Before ordering the application of the measures referred to in this article, the Inter-Ministerial Prices Board shall, in writing, request the enterprise or firm responsible to provide an explanation of what has occurred within a maximum time-limit of 10 days.

COLOMBIA

DECREE NO. 46 OF 14 JANUARY 1965
ENACTING PROVISIONS ON CONTROL OF PRICES

Article 1. Selling prices of necessities or ordinary consumer or household goods, whether domestic or imported, in force on 1 December 1964, may not be changed, nor may the discounts and percentages allowed by producers, manufacturers or traders to their agents or distributors ruling at that date be altered, without prior authorization of the Board of Economic Control. Application for such authorization must be made to the Board, accompanied by statements and tables of production, costs, sales volume and any other details requested by the Board.

Article 2. The Board of Economic Control may, when it deems it necessary, request written statements of production, stocks and sales of any kind of goods. It may also inspect the books and accounts of natural or artificial persons, for the purposes mentioned in the present Decree.

Article 3. The Board of Economic Control may at any time request from producers, manufacturers or traders any information it deems necessary regarding discounts or commissions allowed to agents or distributors, and if it does not find them justified, may officially reject them, in which case it shall decide what commissions are justified and the corresponding prices, together with the date of their entry into force.

Article 4. The Board of Economic Control shall not authorize any changes in prices for goods which have been the object of speculation or hoarding in the two months preceding the date of submission of the respective application.

Article 5. Any violation of the provisions of the foregoing articles shall be punished by the Board of Economic Control, without prejudice to any other penalties provided in the present Decree or laid down in Title IX of the Penal Code, by suspension of the right to obtain import licences, cancellation of trade marks and patents, cancellation of manufacturing or trading licence and possibly closure of the establishment concerned.

Article 7. By "unjustified speculation" shall be understood:

(a) Sale at prices higher than those fixed or authorized by the Board of Economic Control.

(b) Sale by manufacturers or main distributors at prices higher than those in force on 1 December 1964, unless the Board of Economic Control has authorized the change;

(c) Sale of goods to the final consumer at prices higher than those fixed by the Board of Economic Control or, if the latter has not fixed a price, at prices higher than those ruling on 1 December 1964 on the market.

In the case of foodstuffs or agricultrual commodities whose prices have not been fixed by the Board of Economic Control, the local authorities responsible for applying the present Decree may authorize changes in the prices of such goods, if the production situation so requires, and without prejudice to the review or cancellation of such changes by the Board of Economic Control;

(d) Fraud in stated weights, measures, quality or origin;

(e) Any increase in prices alleged to be due to sales tax, where the goods in question are not subject to sales tax;

(f) In cases other than those above, if in the opinion of the Board of Economic Control and the authorities responsible for applying the present Decree, excessive profits are being made;

(g) In general, the contravention of any regulation issued by the Board of Economic Control concerning prices, discounts, profit margins, acts of unfair competition or any commercial transaction.

Additional Clause. Failure to issue commercial invoices, inaccurate entries in invoices, or quotation of prices higher than the official prices shall be treated as presumptive evidence of an intent on to engage in speculation.

Article 8. By "hoarding" shall be understood the acquisition and retention, by any person whether natural or artificial, of foodstuffs, goods, merchandise or wares intended for personal consumption, or the non-sale thereof, where such action is not justified in the opinion of the competent authorities and leads to an unjustified increase in the price.

Article 9. Speculation and hoarding shall be punished, according to the gravity of the offence, by the magistrates or the police by the imposition of one of the following penalities, without prejudice to those laid down in Title IX of the Penal Code:

(a) Fines of 1,000 to 500,000 pesos, depending on the offender's financial resources;

(b) Incommutable detention for up to 30 days;

(c) Seizure and sale to the public, at the official price, of the goods involved in the speculation or hoarding;

(d) Suspension, for up to one year, of the right to obtain import licences;

(e) Closure of the manufacturing or trading establishment for up to 90 days, and

(f) Permanent cancellation of the offender's manufacturing or trading licence.

Additional Clause. The same penalties shall be imposed on anyone reducing the normal rate of production of essential consumer goods without proper justification.

III

EXTRACTS FROM LAWS AND REGULATIONS DIRECTLY PROMOTING THE CONCENTRATION OF ENTERPRISES

(i) Argentina
(ii) Brazil
(iii) Mexico

ARGENTINA

LAW NO. 20,628 OF 31 DECEMBER 1973 CONCERNING PROFITS TAX

REORGANIZATION OF COMPANIES

Article 76. Any profits which may arise from the reorganization of companies or businesses within the meaning of the present article shall not be subject to the tax dealt with in the present law, provided that the successor concern continues to engag in the activity of the restructured enterprise, or some other activity related to it, for a period of not less than two (2) years from the date of the reorganization.

In such cases, the tax rights and obligations laid down in the following articl as applicable to reorganized enterprises shall be carried over to the successor enterprise.

Any change of activity which occurs prior to the expiry of the aforementioned period shall have the effect of a resolutive condition. The Department must be informed of the reorganization within the time limits and on the conditions stipulate by it.

Where the type of reorganization is such that the whole of the reorganized enterprise or enterprises is not fully transferred, the carrying over of tax rights and obligations shall be subject to the prior approval of the Department. By "reorganization of companies or business concerns" shall be understood:

(a) The merger of previously existing enterprises through the establishment of a third enterprise or through the absorption of one of the enterprises;

(b) The division of an enterprise into two or more enterprises which carry on its business;

(c) The sale or transfer of one enterprise to another, where the two enterprise although legally independent, form a single economic unit.

In the case of other sales or transfers of businesses, the tax rights and obligations laid down in the following article shall not be carried over and where the agreed transfer price exceeds the current market price for the assets concerned, the value to be used for tax purposes shall be the said market price and the excess shall be dealt with as provided in the relevant articles of the present law.

Article 77. The tax rights and obligations to be carried over to the successor enterprise or enterprises in the cases specified in the preceding article are as follows:

1. Accumulated non-statute-barred tax losses.

2. Unpaid balances of tax reassessments.

3. Balances of tax exemptions or special deductions unutilized because of limitations on the amount that can be taken into account in any tax year, but transferable to future tax years.

4. Deferred charges not deducted.

5. Forthcoming tax exemptions to which the predecessor enterprise or enterprises would have been entitled under special provisions relating to trade promotion, provided that the new enterprise or enterprises fulfilled the basic conditions of such privilege.

The executive organ specified in the relevant article shall be responsible for dealing with these matters.

6. The taxable value of durable, exchangeable and intangible goods, whatever the value placed on them for the purpose of the transfer.

7. Additions to the taxable balance as a result of the sale of assets or the reduction of stocks, when the predecessor enterprises have made use of tax exemptions or have revised the taxable value of assets, in those cases where the law so provides.

8. Amortization arrangements for durable and intangible goods.

9. Methods of allocating receipts and expenditure by tax year.

10. Calculation of the periods referred to in articles 57 and 61, when they determine tax treatment.

11. Methods of allocating legally deductible allowances.

Should carrying over the methods referred to in sub-paragraphs 8, 9 and 11 of the present article involve the application by the new enterprise of different criteria or methods for similar situations, such enterprise shall opt, in the first tax year, for one or other of the methods followed by the predecessor enterprises, except in cases where different methods may be applied within the same enterprise or undertaking.

In order to apply criteria or methods different from those applied by the predecessor enterprise or enterprises, the new enterprise must request prior authorization from the Department, when required to do so by laws or regulations.

BRAZIL

LEGISLATIVE DECREE No. 1182 OF 16 JULY 1971, ESTABLISHING INCENTIVES FOR MERGERS AND CONSOLIDATIONS

Article 1. For the purposes of mergers and consolidations deemed to be in the interests of the national economy, corporate bodies may revalue the property constituting their fixed assets beyond the limits of the currency depreciation indexing adjustment up to the market value, and this shall be exempt from the income tax chargeable on the increase in value resulting from such revaluation, provided that the provisions of this Legislative Decree are complied with.

Paragraph 1. The exemption provided for in this article shall also apply to transfers of control over the capital of companies as a means of effecting mergers and consolidations, provided that such mergers and consolidations are legally carried out not more than 180 days after the date when control over the shares was transferred.

Paragraph 2. The provisions of this article shall also apply to enterprises which, acting in accordance with the rules and time-limits prescribed by the National Monetary Board, have undertaken to make their shares available to the public.

Article 2. There shall.be established within the Ministry of Finance a Committee on Mergers and the Consolidation of Enterprises (COFIE), which shall be responsible for reviewing cases involving the revaluation, amalgamation and consolidation of enterprises operating in Brazil and those of enterprises which may wish to avail themselves of the option extended under article 1, paragraph 2, of this Legislative Decree. It shall submit these cases, together with a statement of its opinion, to the Ministry of Finance for approval.

Article 3. COFIE shall comprise the following five members:

(a) The Secretary-General of the Ministry of Finance, who will act as Chairman;

(b) A representative of the Ministry of Planning and Over-all Co-ordination;

(c) A representative of the Ministry of Industry and Trade;

(d) A representative of the Federal Revenue Department of the Ministry of Finance; and

(e) A representative of the Central Bank of Brazil.

Sole paragraph. The Federal Revenue Department, with the help of its organization, shall provide the necessary services to enable COFIE to discharge its responsibilities.

Article 4. The exemption provided for in article 1 and paragraphs 1 and 2 thereof shall be subject to the following conditions:

(i) the Ministry of Finance must approve the opinion of the Committee referred to in article 2;

(ii) enterprises concerned in mergers or consolidations must carry out their commitment to make the stock of the corporate body resulting from such mergers or consolidations available to the public, having first satisfied any requirements that may be laid down by the Central Bank of Brazil.

Sole paragraph. The condition stipulated in paragraph (ii) of this article may be waived if the National Monetary Board considers that restrictions should be placed on the sale of the shares of the enterprise planning the merger or of the enterprise resulting from it, so as to ensure that the shares remain under Brazilian financial control.

Article 5. The increase in value resulting from the revaluation effected under the terms of article 1 must be used to increase the amount of capital not more than 180 days after the date on which the Ministry of Finance gave its approval.

Paragraph 1. Failure to comply with the provisions of this article shall entail automatic forfeiture of the exemption.

Paragraph 2. The increase in the amount of capital referred to in this article shall not be subject to income tax.

Paragraph 3. The exemption provided for in the preceding paragraph shall also be granted to partners, shareholders and owners, whether individuals or bodies corporate, covered by the arrangement; they may expand their capital on the same conditions, through the incorporation of distributed assets.

Paragraph 4. If the capital is reduced or the body corporate is dissolved within the following five years, the body corporate shall be liable to tax on the amount incorporated, as distributed operating profits. Partners, shareholders and owners shall be liable to income tax, either at the time of filing their tax returns or at source, in the year in which the dissolution or reduction of capital occurs.

Paragraph 5. In the event of the alienation of shares or capital holdings covered by the exemption provided for in paragraph 3 of this article, the full amount received by bodies corporate from the transaction shall be included in the taxable profits.

Article 6. Any losses incurred through the alienation or decline in value of assets revalued in the manner provided for in article 1 shall not be deductible from taxable profits, but enterprises may set them against the results of subsequent mandatory currency depreciation adjustments.

Paragraph 1. The losses referred to in this article shall be limited to amounts exceeding the original value of the assets, as modified by the currency depreciation adjustment made under the legislation in force.

Paragraph 2. For tax purposes, annual depreciation, amortization and depletion allowances shall continue to be calculated on the basis of book values existing prior to the revaluation dealt with in this Legislative Decree, as modified by the currency depreciation adjustment made under the legislation in force; the sum total of these various allowances shall not exceed the amount of the revaluation.

Paragraph 3. The provisions of this article shall not apply to the mineral resources depletion allowance referred to in Legislative Decree No. 1096 of 23 March 1970.

Article 7. The amount resulting from the revaluation provided for in article 1 shall not entail modification of the foreign exchange value of foreign capital registered with the Central Bank of Brazil and representing investment or reinvestment by persons residing or domiciled abroad in enterprises whose shares are available to the public, or which have participated in mergers of consolidations, or in shares in such enterprises.

Article 8. The views of the Central Bank of Brazil shall first be ascertained whenever financial institutions and public joint stock companies participate in the merger or consolidation, a circumstance which shall make it obligatory to publish the terms of the transaction in daily newspapers with a high circulation.

Article 9. The exemption from income tax referred to in this Legislative Decree may be claimed only once, except where, in the judgment of the appropriate regulatory organ, the transaction involves enterprises forming part of the financial system.

Article 10. Mergers and consolidations of insurance companies shall continue to be governed by the provisions of Legislative Decree No. 1113 of 24 July 1970, subject to the application of the provisions of the present Legislative Decree where appropriate.

MEXICO

DECREE OF 19 JUNE 1973
GRANTING INCENTIVES TO COMPANIES AND ECONOMIC UNITS WHICH PROMOTE NATIONAL INDUSTRIAL AND TOURIST DEVELOPMENT

Article 1. For the purposes of the present Decree, "promotional units", means economic units which promote national industrial development and consist of a promotional company and one or more promoted companies which meet the conditions laid down in the present Decree.

For an economic unit to qualify for the incentives provided for in the present Decree, the promotional company must furnish evidence to the Department of Finance and Public Credit that its constituent companies are increasing their sales and services by a percentage equal to the national industrial growth rate plus 20 per cent, and that they are achieving substantial increases, in terms of article 2, in not less than five of the following activities:

(i) Mexicanization of companies with majority foreign investment;
(ii) Creation of new jobs;
(iii) Establishment of new industrial and tourist enterprises;
(iv) National technological development;
(v) Expansion of exports;
(vi) Substitution of imports;
(vii) Investment in relatively underdeveloped areas;
(viii) Industrial exploitation of natural resources;
(ix) Expansion of industrial and tourist enterprises;
(x) Placing of shares with the public.

Before granting the promotional unit authorization referred to in article 8, the Department of Finance and Public Credit shall require evidence that, in the previous five years, the economic unit has met the conditions laid down in the present article. In the case of new industries, or existing industries with new investment plans, the Department shall grant the authorization, if, in its judgment, their assets or investment plans are of such magnitude that the aforementioned conditions can be met.

Every two years, the promotional company must furnish evidence to the Department of Finance and Public Credit that the economic unit constituted by itself and the promoted companies is fulfilling the conditions laid down in the present article. Where it deems it appropriate, the Department may extend such period to four years.

Article 2. The Department of Finance and Public Credit shall apply the following criteria in deciding whether the conditions referred to in article 1 have been met:

(i) Increases must be measured in relation to the activities of the group of enterprises constituting the promotional unit and with respect to the immediately preceding period;

(ii) Increases must be equal to or greater than the average for national industrial activity;

(iii) Increases shall be assessed in accordance with a joint analysis of all promotional activities, and in the light of the following considerations.

(a) The group of enterprises shall not displace small or medium-sized enterprises which are operating satisfactorily;

(b) The group of enterprises shall not occupy a monopoly position in the national market to the prejudice of the public in general or of any social class in particular;

(c) The group of enterprises shall not exert undue pressure on price levels, having regard to the particular branch of industrial activity involved;

(d) The group of enterprises shall not indulge in lavish expenditure of a sumptuary nature;

(e) The group of enterprises shall contribute to the attainment of national development policy objectives;

(f) The group of enterprises shall comply with the law of the land, and, in particular, with the Law for the Promotion of Mexican Investment and the Regulation of Foreign Investment;

(iv) With regard to the Mexicanization of companies with majority foreign investment, no increase shall be required in relation to the preceding period, but the following conditions must be fulfilled;

(a) The necessary number of shares in each enterprise must be acquired to bring the proportion of foreign investment into conformity with the Law for the Promotion of Mexican Investment and the Regulation of Foreign Investment;

(b) Securities must have been entered in the National Registry of Foreign Investments for not less than two years prior to their acquisition, except in the case of securities issued less than two years previously or securities acquired before the said Register has been in existence for two years;

(c) In order to prevent speculation and to ensure compliance with the foreign investment regulations, securities, once acquired, must continue to form part of the assets of the purchasing company or companies for not less than two years unless, within those two years, they are transferred to third parties in accordance with an investment programme subject to the approval of the Department of Finance and Public Credit;

(v) With regard to the creation of new jobs, increases shall be calculated on the basis of the maximum and minimum numbers of workers employed during the current and immediately preceding periods respectively;

(vi) The formation of enterprises from the acquisition, merger or liquidation of companies, unaccompanied by a substantial increase in assets in relation to the assets existing prior to such acquisition, merger or liquidation shall not be regarded as the establishment of new industrial or tourist enterprises;

(vii) Increases in technological development shall be measured in terms of the resources allocated for that purpose as between one period and another, except where technological services are furnished abroad, in which case no increase shall be required over the preceding period;

(viii) Substitution of imports means the production of goods required to meet deficits in national production which, for the preceding two years, have exceeded 20 per cent of annual consumption, provided that the prices of goods substituted for imports are similar to prices in the major supplier countries or, where the goods concerned are also produced in Mexico, on the domestic market, unless the Department of Industry and Trade adopts a specific policy for such goods, in which case prices must conform to that policy. The Department of Finance and Public Credit may also apply the above principle to goods where there are good reasons for anticipating a deficit in national production;

(ix) With regard to investment in relatively underdeveloped areas, no increase shall be required in relation to the preceding period. Economic areas are defined in the Decree published in the Official Gazette of 20 July 1972, where Areas 2 and 3 are described as relatively underdeveloped areas.

(x) The provision relating to the industrial exploitation of natural resources shall apply to such resources as, in the opinion of the Department of Finance and Public Credit, are insufficiently exploited;

(xi) With regard to the expansion of industrial and tourist enterprises, an increase shall be required in relation to the preceding period in investments of industrial and/or tourist assets by a percentage equivalent to the national industrial growth rate plus 20 per cent;

(xii) With regard to the placing of shares of companies of the promotional unit, this should be done with the general investing public, through the Stock Exchange, in accordance with an investment programme subject to the prior or subsequent approval of the Department of Finance and Public Credit, in order to prevent speculation;

(xiii) In the first period in respect of which evidence of increase must be furnished to the Department of Finance and Public Credit, the increase shall be measured by comparing the two halves of the period. For subsequent periods, the comparison shall be with the immediately preceding period.

Article 3. For the purposes of the present Decree, "promotional company" means a legally constituted Mexican joint stock company which fulfils the following conditions:

(i) Its capital must be fully subscribed unless it is variable capital;

(ii) All its shares must be owned by Mexicans or by Mexican companies with a clause debarring aliens, and Mexican companies holding shares in the latter companies must in turn have the same clause and so on successively, so that no alien can ever have any interest, direct or indirect, in the company;

(iii) None of its shares must be owned by a company in which the "promotional company" as a shareholder;

(iv) Its activities must be limited to buying and selling stock or shares, to granting or guaranteeing credits solely for promoted companies, providing services or carrying out promotion, expansion or re-organization studies exclusively for promoted companies, either existing or projected;

(v) It must invest not less than 75 per cent of its assets in shares of industrial or tourist enterprises or in credits to them, but in the latter case the investment must not exceed 30 per cent. The balance of its assets may be invested in:

(a) Industrial property;

(b) Temporary investments of a non-speculative character;

(c) Commercial enterprises established in frontier areas or in the free zone or mainly engaged in marketing the products of promoted companies;

(d) Service enterprises intended primarily for promoted companies

(e) Assets intended exclusively for the operation of the company;

(f) Other goods or activities, subject to the prior authorization of the Department of Finance and Public Credit.

Article 4. "Promoted company" means a legally constituted Mexican joint stock company which fulfils the following conditions:

(i) That more than 50 per cent of its common stock is controlled, directly or indirectly, by the promotional company;

(ii) That its management and administration are in Mexican hands. If the company has a board of directors, the majority must be Mexicans. If it employs foreigners, it must show how it is complying with the Federal Labour Law concerning the training of Mexican workers;

(iii) That it is not a credit, insurance or guarantee institution or an auxiliary credit organization;

(iv) That it invests not less than 75 per cent of its resources in industry or tourism, except in the cases mentioned in article 3, sub-paragraphs (v) (c), (d) and (e);

(v) That it does not own shares in a company which, directly or indirectly, controls shares in the promotional company, or in a company which, directly or indirectly, controls any of its own shares;

(vi) That it is not wholly exempt from the tax on the total income of companies or subject to a special régime for the purposes of that tax;

(vii) That it does not receive subsidies or enjoy allowances, exemptions or reductions in respect of local taxes;

(viii) That its tax year ends on the same date as that of the promotional company or within 30 days prior to that date, unless specially authorized by the Department of Finance and Public Credit;

(ix) That it submits to the Department of Finance and Public Credit copies of the relevant records in the National Register for the Transfer of Technology of all deeds, contracts or agreements which, in accordance with the law establishing the said Register, have to be recorded there. In the case of external payments for credits, interest must not exceed the prevailing international market rate;

(x) That the domestic content of its direct production costs is not less than 60 per cent. The Department of Finance and Public Credit may authorize a lower percentage where the raw materials used are not available in Mexico or where the company undertakes to bring the domestic content up to 60 per cent within a specified time and in accordance with a programme agreed to by the Department. This condition shall not apply to milling enterprises, which are governed by special provisions.

Article 5. Promotional companies may request from the Department of Finance and Public Credit the authorization referred to in article 19, paragraph (vii), of the Income Tax Law, provided they receive the profits from the sale or transfer of shares in their capacity as shareholders in Mexican joint-stock companies in which Mexicans possess not less than 51 per cent of the capital and which are listed on the Stock Exchange, and that they place a substantial proportion of their shares with the general investing public through the Stock Exchange. For this purpose, the promotional company shall submit its share-placing and investment programmes to the Department and explain its policy with regard to the acquisition and selection of securities.

Any promotional company which does not avail itself of the régime provided for in article 7 shall be required to comply only with the following conditions:

(i) It must guarantee that it and the various enterprises in which it invests its funds constitute an industrial promotional unit as defined in articles 1 and 2 of the present regulations;

(ii) It must comply with the provisions of article 3;

(iii) It must ensure that the companies it promotes fulfil the conditions laid down in article 4, paragraphs (ii), (iii), (iv), (v), (vii) and (ix);

(iv) It must request the authorization of the Department of Finance and Public Credit for it, together with other companies, to be considered or to cease to be considered as a promotional unit;

(v) It must inform the Department of Finance and Public Credit of any new acquisition of stock or shares in a company, stating the amount of the investment, the activities of the company and the proportion of the company's capital which it holds; it must also report to the Department on the progress of its share-placing programmes and notify it when any company is severed from the promotional unit;

(vi) It must keep such books and registers as may be decided by the Department of Finance and Public Credit, comply with the requirements laid down in the present regulations, and furnish any information or

Article 6. Companies which pay dividends to a promotional company shall not withhold the tax imposed by article 19, paragraph (v), of the Income Tax Law.

Article 7. Promotional companies may request authorization from the Department of Finance and Public Credit to calculate the taxable income of the promotional unit and pay the appropriate tax, in accordance with the instructions of the Department. In all cases, the following principles shall be observed:

(i) The promotional company and the promoted companies shall submit separate tax returns, calculating and paying the appropriate tax as provided by the Income Tax Law;

(ii) The tax payable by the promotional unit shall be calculated by applying to its total taxable income, which is the difference between total income and the authorized deductions declared by its constituent companies, the rate laid down in article 34 of the Income Tax Law;

(iii) In preparing the tax return of the promotional unit, the promotional company shall calculate the difference between the total tax payable by the unit and the total taxpayable by its constituent companies. If the difference shows a debit, the promotional company shall attach payment for this amount to the promotional unit's tax return. If the difference shows a credit, it shall be treated as a credit to the promotional company, which may ask either for it to be refuned or for it to be set off against the payments to be met by the promotional unit, or, with the latter's consent, against provisional or final payments to be met by a promoted company. The refund or set-off resulting from the difference between the tax payable by the promotional unit and the tax payable by its constituent companies shall not exceed the sum of the taxes paid by the promotional companies and the promoted companies, except where the credit balance arises from, and does not exceed, the total amount of allowances, reductions or partial exemptions in respect of such tax;

(iv) The promotional company shall be responsible for the tax credits payable by the promotional unit and shall submit the appropriate return within the four months following the close of its financial year;

(v) Provision for losses incurred by promoted companies shall not be taken into account in calculating the total taxable income of the promotional unit, except where such provision has not been deducted in the corresponding return in previous years;

(vi) Profits or losses arising from transfers between constituent companies of a promotional unit of non-depreciable immovable property shall not be taken into account in calculating the unit's total taxable income;

(vii) Promotional units shall not be required to make provisional payments.

Article 8. Authorization shall be required from the Department of Finance and Public Credit for a group of companies to be considered, or to cease to be considered, as a promotional unit and for a new company to be incorporated in a promotional unit or a company to be severed from it.

Article 9. The Department of Finance and Public Credit may grant the authorizations referred to in article 8 on the following conditions:

(i) Any company included in the calculation of the total taxable income of a promotional unit must continue to be included in the calculation of such income, unless expressly authorized by the Department;

(ii) When the Department so decides, a company in which more than 50 per cent of the ordinary shares are owned by a promotional unit or the majority of the ordinary shares are controlled by a promotional unit through one or more of its constituent companies, shall be included in the calculation of the total taxable income of the said unit, the Department being empowered to make authorization conditional on the companies fulfilling the conditions laid down in article 4 in order to be considered as promoted companies;

(iii) The companies which comprise the promotional unit must inform the Department of any transfer of shares resulting in the acquisition or loss of control in a company by the promotional unit. This information must be furnished within one month from the date of the occurrence of either of the aforesaid events;

(iv) If a company severs its membership of a promotional unit, or a promotional unit ceases to consider itself as such, the promotional company shall calculate the cash value of the tax benefits obtained or produced by the severing company or companies or by the group of promoted companies, as the case may be.

The promoting company shall pay all amounts due as a result of the dissolution, either for losses which the severing company reserves the the right to amortize, or for deferred profits.

Article 10. The promotional company shall keep such books and registers as may be decided by the Department of Finance and Public Credit in order to comply with the requirements laid down in the present Decree, and furnish any information and documentation which may be requested in that regard.

In all cases and except as authorized by the Department, the promotional company shall:

(i) Submit, within four months following the close of its tax year, a financial statement audited by a certified public accountant for each of the companies constituting the promotional unit; it shall also attach a complete list of the securities included in its assets or in the assets of companies in which it controls more than 50 per cent of the capital, indicating the percentage of such capital represented by its investment;

(ii) Submit financial statements or pro forma financial statements, audited by a certified public-accountant, when requesting any of the authorizations referred to in article 8.

IV

EXTRACTS FROM COMMERCIAL CODES RELATING TO JOINT OWNERSHIP OR MANAGEMENT OF ENTERPRISES

(i) Argentina
(ii) Colombia
(iii) Chile

ARGENTINA

LEGISLATIVE DECREE NO. 19,550, of 25 APRIL 1972

LAW ON COMMERCIAL COMPANIES

SECTION V: CONCERNING SHAREHOLDERS

SHAREHOLDINGS IN OTHER COMPANIES: RESTRICTIONS

Article 31. No company, other than finance or investment companies, may take or possess a shareholding in another company or companies to an amount exceeding its free reserves plus half its capital and legal reserves, except where the excess shareholding results from the payment of stock dividends or the capitalization of reserves.

These restrictions do not apply to entities governed by Law No. 18,061. In specific cases the Executive may authorize their removal.

Any shareholding, whether in the form of non-voting shares, allocations or ordinary shares, in excess of the above amount shall be disposed of within the six months following the date of adoption of the accounts showing that the limit has been exceeded. This situation shall be reported to the company in which the shares are held, within ten days of the adoption of the accounts in question. Failure to dispose of such excess shall entail the loss of voting rights and of the profits accruing to the excess holdings, until such time as this condition is fulfilled.

MUTUAL SHAREHOLDINGS: INVALIDITY

Article 32. If a company is formed or its capital increased by means of mutual shareholdings, even through a third party, any such operation shall be void. Founders, directors, managers and trustees of such companies, shall be jointly and severally liable without limit for any breach of this prohibition. The illegally assembled or increased capital shall be reduced within three months, failing which the company shall automatically be dissolved.

Similarly, a controlled company may not hold shares in the controlling company or in a company controlled by the latter in an amount that, according to the accounts, exceeds its reserves, excluding legal reserves.

Non-voting shares, allocations or ordinary shares that exceed the fixed limits shall be disposed of within the six months following the date of adoption of the accounts showing the existence of the offence. Failure to comply with this condition shall be penalized in accordance with article 31.

CONTROLLED COMPANIES

Article 33. Where a company, either directly or through another company, itself a controlled company, owns shares for any reason in a third company sufficient in number to give it the necessary votes to direct the third company's decisions, the third company is deemed to be a controlled company.

LINKED COMPANIES

For the purposes of section IX of the present chapter, where one company holds more than 10 per cent of the capital of another company, they are **deemed** to be linked companies.

When one company holds more than 25 per cent of the capital of another company the latter shall be notified accordingly, so that it may take cognizance of the fact at its next general meeting.

COLOMBIA

COMMERCIAL CODE. VOLUME 2

Title 1

Chapter VII

GENERAL MEETINGS OR BOARD MEETINGS

Article 202. No persons shall be appointed to or hold simultaneously, directorships of more than five joint-stock companies, even if he has accepted that number.

The Inspector of Companies shall impose a fine of up to ten thousand pesos for any breach of this rule, without prejudice to his right to declare vacant any post occupied in excess of that number.

The provisions of the present article shall also apply to parent companies and their subordinate companies or to subordinate companies among themselves.

Chapter XI

PARENT COMPANIES, SUBORDINATE COMPANIES AND BRANCHES

Article 260. Subordinate companies may be either affiliated or subsidiary. A company which is economically, financially or administratively managed or controlled by another company, known as the parent company, shall be deemed an affiliated company. A company which is managed or controlled by the parent company through or with the assistance of one or more of its affiliated companies, or by companies linked to the parent company or its affiliated companies, shall be deemed a subsidiary.

Article 261. A company shall be deemed a subordinate if the following conditions, among others, apply:

1. If fifty per cent or more of the capital is owned by the parent company, either directly or through or jointly with its subordinates or with the latter's affiliated or subsidiary companies;

2. If a company, as described in paragraph 1 above, possesses, either jointly or severally, the right to cast the number of votes needed to form a quorum at general meetings or board meetings or meetings of the board of directors, if any; and

3. If linked companies share fifty per cent or more of the company's profits, through either preferential rights or special agreements.

Two or more companies are deemed to be linked when they have joint or mutual economic, financial or administrative interests, whether in a controlling or dependent situation.

Article 262. Subsidiary companies may not on any account hold non-voting shares, allocations or ordinary shares in the companies by which they are managed or controlled.

Article 263. Branches are business establishments opened by a company at or away from its headquarters for the development of company business or part thereof, and managed by agents with authority to represent the company.

If the articles of association do not specify the powers of the managers of branches, they shall be granted powers by means of an official instrument or legal document, which shall be entered in the register of commerce. Failing such powers, they shall be presumed to have the same powers as the managers of the parent company.

Article 264. Agencies are business establishments whose managers are not empowered to represent the company.

Article 265. The Government may, through its supervisory bodies, investigate the nature of all transactions in goods carried out in any form between a company and its subordinate, affiliated or subsidiary companies.

CHILE

LEGISLATIVE DECREE NO.251 AS AMENDED BY LAW NO.17,308 OF 1970

Article 96. No person may be a director of more than three joint-stock companies, including insurance companies.

Any person elected or appointed a director of a greater number of companies than indicated in the first paragraph of the present article shall choose which directorships he wishes to retain, within the space of thirty days from the date on which he was elected or appointed. Otherwise, any election or appointment to a directorship in excess of the said maximum shall be automatically void. Any appointment or election which contravenes the provisions of the preceding article shall likewise be void. In either case, the board shall be jointly and severally liable to third parties for any deeds executed or contracts entered into by the company in such circumstances.

The restrictions laid down in the present and the preceding article shall not apply to joint-stock companies exclusively concerned with sports, educational, charitable or other similar activities, where the directors receive no payment.

Article 121. Affiliated companies may be formed only when they are necessary for or conducive to the achievement of one of the specific objects of the parent company. The Inspector of Companies shall decide, in each case, whether this condition is fulfilled.

An affiliated company of a joint-stock company is a company in which fifty per cent or more of the voting shares are owned by the joint-stock company.

Affiliated companies shall be subject to the following rules:

(1) They shall not acquire shares in the parent company or shares or rights in other affiliated companies of the same enterprise;

(2) Directors of the parent company, whether or not members of the board or administrators of the affiliated company, may attend and vote at meetings of the board or of the administrators and shall be entitled to inspect the books and records of the affiliated company;

(3) Any operations of the affiliated company in which any director of the parent company or any of the persons mentioned in the second paragraph of article 104 has an interest, in accordance with that paragraph, shall first be authorized by the board of the parent company without the director concerned. The board's decision shall be reported to the first general meeting of shareholders of both companies;

(4) The parent company shall submit to the general meeting of its shareholders, in addition to the report and accounts, a memorandum explaining all its dealings and those of its affiliated companies and shall produce the accounts of the affiliated companies.

INTERIM ARTICLES

Article 2. Shares of a parent company that belong at present to its affiliated companies shall not be entitled to take part in voting for the election of directors or in other votes at meetings of shareholders of the parent company.

Two years after the date of entry into force of the present law, the rule laid down in the preceding paragraph shall apply to shares owned by a company in any other company engaged in business different from its own specific object, except where it is business that the company has to continue because the necessary capital has been raised for the achievement of its specific object and where it is justified in terms of economic advantage, subject to the decision in each case of the Inspector of Companies.

V

EXTRACTS FROM LAWS AND REGULATIONS AIMED AT CONTROLLING FOREIGN INVESTMENT AND PROMOTING THE DEVELOPMENT OF DOMESTIC ENTERPRISES

(i) Argentina

(ii) Brazil

(iii) Mexico

(iv) Andean Group

ARGENTINA

FOREIGN INVESTMENT LAW No. 20,557 OF 6 DECEMBER 1973

Article 1. The present law shall govern all matters concerning:

(a) Direct investments of foreign capital in the form of:

1. Foreign currency transfers for investment in sectors determined by the Executive.

2. New capital goods and their spare parts, in the amount agreed to be necessary by the supervisory authority; the investment agreement shall prohibit these from being disposed of in any way for the period stipulated, which shall depend on the goods concerned.

3. External loans in foreign currencies, where capitalized, provided that in the opinion of the supervisory authority the use to which the loans have been put warrants permission for them to be invested in accordance with the present Law, and external loans in Argentine currency which fulfil the same requirements.

4. Profits from foreign investments, remittable to places abroad.

5. Argentine external debt securities, where approved by the supervisory authority on the basis of a report from the Central Bank of the Argentine Republic, regard being had to the balance-of-payments situation and the circumstances of the case in question.

(b) Debts which are owned by natural or artificial persons of public or private law domiciled in Argentina to persons domiciled abroad and which give rise or may give rise to rights or obligations to transfer assets to places abroad by way of repayment of capital or payment of interest.

(c) Agreements or arrangements of any kind which exist between natural or artificial persons of public or private law domiciled in Argentina and creditors domiciled abroad and which create or may create rights or obligations to transfer assets to places abroad. This shall not apply to contracts for the use of technology or to transport or insurance contracts.

Article 2. For the purpose of the provisions of the present Law, domestic enterprises are classified as follows:

(a) Foreign enterprises, meaning enterprises in which the Argentine capital is less than fifty-one (51) per cent of the voting capital.

(b) Mixed enterprises, meaning enterprises in which the Argentine capital, whether private or government, is between fifty-one (51) and eighty (80) per cent of the total capital and carries the legal power of decision and which are shown to be effectively managed technically, administratively, financially and commercially by the Argentine investors.

(c) Argentine enterprises, meaning enterprises in which Argentine investors possess more than eighty (80) per cent of the capital and the legal power of decision and which are shown to be effectively managed technically, administratively, financially and commercially by the Argentine investors.

Article 3. The following terms have the meanings stated:

(a) Foreign investor: any natural or artificial person domiciled outside Argentine territory and owning capital which is to be or has been invested in enterprises of the kinds defined in article 2.

(b) Argentine investor: any natural person domiciled in Argentina or any artificial person constituted in accordance with the laws of Argentina and domiciled there whose capital is in the hands of natural persons who are domiciled in Argentina and do not directly or indirectly represent foreign natural or artificial persons; the Argentine State or provincial or municipal governments or their officers; decentralized official bodies; and State enterprises.

(c) Domicile: the meaning given it by article 89 of the Civil Code.

Article 4. Foreign investors wishing to invest foreign capital in Argentina in accordance with the provisions of article 1 (a) shall first apply for permission from the supervisory authority, which shall consider the application and conduct the necessary negotiations. Investments shall be effected by means of an investment agreement between the authority and the foreign investor, which shall be submitted for approval to the Executive where the agreement results in the formation of an enterprise of the kind described in article 2 (b) or to the National Congress where it results in the formation of an enterprise of the kind described in article 2 (a).

Article 5. Investment agreements shall provide in substance for compliance with the following requirements:

(a) The investment shall be in activities and geographical areas specified in order of priority by the Executive.

(b) It shall contribute to the better utilization of Argentina's human and natural resources.

(c) It shall help to improve the standard of living of the population.

(d) The requisite precautions shall be adopted to prevent or limit environmental pollution.

(e) The goods or services to be produced shall facilitate import substitution or shall be for export under an express undertaking, leaving a net balance to Argentina as regards the foreign exchange involved in the investment, calculated in the light of probable outflows occasioned by capital repatriation, profits, amortization, interest, royalties, imports (including indirect imports through inputs) and other items.

(f) The investment shall make use of technology consistent with Argentina's socio-economic objectives and provide for research and studies in applied technology in the sphere concerned to be undertaken locally and for Argentine technology to be developed.

(g) It shall make use of managerial, scientific, technical and administrative personnel of Argentine nationality in the proportion indicated in each case by the supervisory authority.

(h) It shall not displace Argentine enterprises from the market at the time or subsequently.

(i) It shall not absorb domestic savings in excess of the limits established under the present Law and shall ensure financial arrangements commensurate with the progress of the activity to which the investment is directed.

Article 6. No permission shall be given for new investments which are:

(a) Investments that involve the limitation of export possibilities or entail exports being made subject to restrictive agreements or arrangements of any kind which the authority responsible for approving the investment considers unacceptable.

(b) Investments that involve the removal of any dispute from the jurisdiction of the courts of Argentina or entail the possibility of States or international legal persons being subrogated to the rights and remedies of foreign investors.

(c) Investments directed to the following sectors:

1. Activities relating to defence and national security.

2. Public services, i.e. health services, energy, gas, transport, telecommunications and postal services.

3. Insurance and commercial banking, except for branches of foreign banks where a régime of reciprocity exists and the investment is advantageous to Argentine interests, investment banking and financing.

4. Advertising, radio and television broadcasting, newspaper, periodical and other publishing, and other mass media.

5. Domestic marketing services for products of any kind unless manufactured by the investor.

6. Activities reserved by law for State enterprises or Argentine enterprises, without prejudice to legislation concerning subcontracting to private enterprises.

7. Farming, stockbreeding and forestry unless they involve new technology which the supervisory authority considers of special interest for the Argentine economy.

8. Fisheries, unless production can be placed on closed international markets.

The addition of new sectors to the foregoing list shall require legislation.

Investments within the scope of article 2 (c) shall not be regarded as new investments.

(d) Investments in shares, interests or other holdings in companies or investments in movable assets where any of these are connected with the production or marketing of goods existing in Argentina and belong to Argentine enterprises, except where physical or other business assets are acquired in the winding-up of a domestic enterprise on bankruptcy and in circumstances which under the pertinent legislation ensure equal opportunity for the acquisition of the assets by Argentine investors, subject always to the prohibitions expressed in paragraphs (a), (b) and (c) of this article.

Article 7. As regards activities not listed under article 6 (c), where prospective investments are in enterprises of the kinds referred to in article 2 (a) and 2 (b) the supervisory authority shall give preference to application in which the investors undertake that:

(a) the enterprise will be converted into an Argentine enterprise within ten (10) years, with at least twenty (20) per cent of the capital paid up within the first five (5) years and the remainder paid up in portions of not less than sixteen (16) per cent per annum;

(b) the products of the enterprise will be increasingly exported to an extent and in accordance with a time-table stipulated in the investment agreement.

Article 8. Where a foreign investment is permitted for an activity which presupposes the depletion of resources, the permission shall expressly specify that depletion allowances shall not exceed the general depletion allowances laid down in the tax legislation.

Article 9. Investments of foreign capital shall consist in all cases of shares, interests or other forms of capital holding which shall be of the registered kind and shall not be transferable unless the transfer is recorded in the company's books and is first agreed to by the supervisory authority. Multiple voting rights may not be accorded to foreign capital holdings.

PRIORITIES

Article 10. The supervisory authority shall give priority to investments which in addition to meeting the requirements established in article 5 involve any of the following:

(a) the use of unemployed Argentine manpower and assistance in training it;

(b) the application of technology created or to be developed in Argentina;

(c) the utilization of Argentine raw materials, intermediate goods and capital equipment;

(d) a contribution to the decentralization of economic activities geographically;

(e) a commitment to deposit the profits referred to in article 15 with the National Development Bank or with official State or provincial banking institutions of similar object;

(f) an undertaking to reinvest profits.

Investment agreements shall specify the reasons for the priority and the investor's obligations in that respect.

REPATRIATION OF CAPITAL

Article 11. "Repatriable capital" means the amount of foreign investment initially permitted and actually made in Argentina as registered in the original or a similar currency, plus any reinvestments approved under the present Law and less repatriated capital and net losses, calculated in the original or a similar currency at the rate of exchange applicable at the time the calculation is made.

Article 12. Repatriation shall take place in accordance with the provisions of the investment agreement or any amendments to it, which agreement shall:

(a) guarantee the continuity of the enterprise's activities and the rendering of services as stipulated;

(b) determine the annual sum qualifying for repatriation, which shall be compatible with the requirement of continuity referred to in paragraph (a) above and may not exceed twenty (20) per cent of the repatriable capital;

(c) specify an initial period during which repatriation may not take place and which shall be not less than five (5) years from the approval of the investment agreement.

The sum qualifying for repatriation in any year shall be a duly certified amount which has been approved by the supervisory authority and is expressed in the currency c registration of the repatriable capital or a similar currency and calculated at the rat of exchange applicable at the time of the transfer.

TRANSFER OF PROFITS

Article 13. Profits on foreign investments may be remitted to places abroad in the proportion stipulated in the investment agreement or any amendments to it. The amount transferred shall not exceed twelve and a half (12.5) per cent or a rate of four percentage points higher than the rate of interest paid by first-class banks for fixed-term deposits of not more than one hundred and eighty (180) days in respect of the currency of registration of the repatriable capital, whichever is the higher. Profits shall not be transferable out of funds derived from foreign or domestic loans and shall be remittable solely out of the liquid funds of the enterprise, except as expressly permitted by the supervisory authority. They shall further be untransferable if any tax or social welfare liabilities are outstanding.

REINVESTMENT OF PROFITS

Article 14. The supervisory authority may permit transferable profits to be reinvested in the same enterprise but not upon different conditions from those stipulated in the investment agreement or any amendments to it. Its approval shall be given by decision. Any reinvestment of transferable profits in other enterprises shall take place in accordance with the provisions of the present Law and the regulations supplementing it.

In all cases reinvestments shall take the form of duly certified amounts expressed in the currency of registration of the repatriable capital or a similar currency and calculated at the rate of exchange applicable on the date of the permission. The supervisory authority may restrict reinvestment to a specified percentage of the profits.

Once a reinvestment has been approved it shall be regarded as an investment and attract the repatriable capital and transferable profit rights provided for in the present law.

PROFITS PERMANENTLY INVESTED IN ARGENTINA

Article 15. Any profits which in a given year exceed the percentages determined under article 13 or have not been the subject of a transfer application under that article shall be regarded as permanently invested in Argentina and shall not be transferable to places abroad on any account; they may however with the prior consent of the supervisory authority be invested or reinvested as domestic capital which does not attract repatriation or transferable profit rights, but not in the economic sectors enumerated in article 6 (c) of the present Law.

RESTRICTIONS

Article 16. In a critical balance-of-payments situation, which shall in all cases be determined by the Central Bank of the Argentine Republic, repatriations of capital and transfers of profits may be deferred while such a situation prevails, without prejudice to the rights of remittance concerned.

Article 17. The supervisory authority shall in every investment agreement stipulate the maximum indebtedness incurrable by the foreign investor or foreign enterprises to natural or artificial persons of public or private law domiciled in Argentina.

This indebtedness shall be limited exclusively to short-term domestic credit under the conditions specified for each sector, without prejudice to such special promotional schemes of finance as the Central Bank of the Argentine Republic may declare additionally applicable to the enterprises covered by the present Law.

Article 18. Foreign investors holding capital in enterprises which benefit as from the date of entry into force of the present Law from participation in promotional schemes shall be deprived of the rights provided for in articles 11, 12 and 13 while any benefits or obligations exist as a result of that participation.

Article 19. In no case may foreign investors be granted more favourable treatment than is granted to Argentine investors.

PREVIOUS INVESTMENTS

Article 20. Investments of foreign capital made before the application of the present Law either directly or indirectly in the sectors enumerated in article 6 (c), subparagraphs 1 and 4, may be reviewed by the supervisory authority, which shall then determine whether they should be nationalized or expropriated by the National Congress as the case may be.

Investments of foreign capital covered by article 1 (a) and made in Argentina under any provision in force before the application of the present Law, shall be recorded in the Foreign Investments Register provided for in article 32 under the conditions laid down in the regulations.

Profits remitted by enterprises referred to in article 2 (a) and 2 (b) shall be liable to a special transfer tax based on the proportion of repatriable capital qualifying for profit transferability, in accordance with the following scale:

Up to 6 per cent:	20 per cent
From 6 to 9 per cent:	22 per cent
From 9 to 12 per cent:	25 per cent
From 12 to 15 per cent:	30 per cent
From 15 per cent upwards:	40 per cent.

This tax shall be collected by the Internal Revenue Authority in accordance with the provisions of Law No. 11683 as promulgated in 1968 and amended.

The above tax shall not apply to foreign investors who (a) agree to be governed by the provisions of the present Law and (b) apply to be registered accordingly and thus to become subject to its provisions. In such cases the supervisory authority shall consider the application in accordance with the requirements and procedure provided in the present Law and shall submit the new conditions and the corresponding investment agreement to the Executive for approval.

Article 21. As regards the investments specified in article 20, the repatriable capital qualifying for profit transferability shall be capital owned by foreign investors which is actually invested in Argentina and is duly verified as such by the supervisory authority.

Article 22. The investment agreements in question may, where stipulated in the regulations issued by the Executive, provide for the conversion of the enterprise into an Argentine enterprise or a mixed enterprise as the case may be, with a gradually increasing proportion of Argentine capital.

In such cases the Executive shall take account of the characteristics of the sector concerned, the size of the enterprise, the balance-of-payments situation and Argentine investment potential.

Article 23. In the case of foreign investments which have not been recorded in the Foreign Investments Register as required within the specified time, capital may not be repatriated nor profits be remitted to places abroad; as regards credit use these investments shall rank as Argentine investments.

FOREIGN DEBTS, EXTERNAL LOANS AND AGREEMENTS AND ARRANGEMENTS

Article 24. Foreign debts referred to in article 1 (b) which are not enforceable on the date of publication of the regulations to the present Law in the Official Gazette shall require prior authorization from the Central Bank of the Argentine Republic as provided in the regulations. Authorization shall be subject to prior consideration of the general characteristics of the proposed transaction in the light of conditions on international financial markets and the principle of economic effectiveness. Authorizations shall be recorded with the Central Bank of the Argentine Republic, which may fix global or sectoral limits of foreign indebtedness for specified periods.

This article shall not apply to foreign credit for capital goods acquired on deferred-payment terms or for imports.

Article 25. External loans to foreign enterprises shall be subject to the following conditions:

(a) They may not be guaranteed by banks unless made by international financing bodies of which Argentina is a full member and unless the transaction is compatible with any sectoral or regional priorities laid down by the Executive.

(b) Any amounts transferred to places abroad in respect of penalties incurred by a foreign enterprise because of negligence or fraud on the part of the enterprise or its representatives, agents or directors shall be deducted directly from the amount of the repatriable capital, without prejudice to any rights of action that may be involved.

(c) Loans of no fixed maturity or amount shall not exceed the maximum limit of indebtedness or depart from the requirements established for each transaction by the Central Bank of the Argentine Republic.

This article shall not apply to foreign credit for capital goods acquired on deferred-payment terms or for imports.

LOANS AND OTHER CONTRIBUTIONS FROM PARENT COMPANIES TO SUBSIDIARIES OR FROM ONE SUBSIDIARY TO ANOTHER

Article 26. In respect of agreements creating debts owed by natural or artificial persons of public or private law domiciled in Argentina to persons domiciled abroad, the effective annual rate of interest shall not be more than two percentage points higher than the rate for first-class securities on the financial market of the country of origin of the currency in which the transaction has been registered. In no case may such rates be higher than those authorized by the Central Bank of the Argentine Republic for the debts referred to in article 24. For the purposes of the present article, effective interest means the total amount to be paid by the debtor for the use of the credit concerned, including costs, premiums and sums payable on any other account.

The present article does not cover relationships between subsidiaries and their parent companies or between subsidiaries themselves or relationships of structural dependency existing between a domestic and a foreign enterprise; in such cases any financial, technological or other contribution from one such person to another, regardless of the legal status of the persons concerned, shall be governed by the legislation on capital contributions or profits as the case may be.

Article 27. Foreign credit in respect of which the debt is enforceable on the date of publication of the regulations to the present Law in the Official Gazette shall comply with the provisions of articles 24 to 26 as far as any extension or modification of the credit is concerned. Credits of no fixed amount or maturity shall comply with those provisions within a period of one (1) year from that date. On the expiry of that period no remittances may be made to places abroad in respect of such items unless these requirements are complied with.

This article shall not apply to foreign credit for capital goods acquired on deferred-payment terms or for imports.

AGREEMENTS AND ARRANGEMENTS

Article 28. Remittances to be made to places abroad under agreements or arrangements of the kind referred to in article 1 (c) which are concluded after the present Law enters into force shall not take place until they have been approved by the supervisory authority with the intervention of the Central Bank of the Argentine Republic.

FINAL PROVISIONS

Article 29. Any stipulations or agreements between partners or shareholders and groups of shareholders shall be null and void if they contravene the provisions of the present Law and in particular if they give the holders of foreign capital concealed rights of decision or veto that are not apparent in instruments produced or notified to the supervisory authority.

Article 30. Any infringement of the provisions of the present Law shall entail the temporary or permanent suspension of the rights established therein, without prejudice to any liability which the enterprise and its agents, accomplices, hidden accessories or partners may incur under criminal, foreign exchange, tax and/or customs legislation.

Article 31. Liability for the obligations imposed by an investment agreement on a domestic enterprise receiving foreign investment shall be borne jointly and severally by the foreign investor.

Article 32. The authority responsible for implementing the present Law and supervising its observance in respect of permitted investments shall be designated by the Executive by decree; the authority shall be within the sphere of responsibility of the Ministry of the Economy and shall maintain a Foreign Investments Register. The Executive shall promulgate regulations to the present Law within one hundred and twenty (120) days following the date of its entry into force.

Article 33. The Executive is empowered to adopt the necessary measures for former Argentine enterprises transferred to foreign investors through the denationalization procedure referred to in article 6 (d) to be reconverted into Argentine enterprises within a period of three (3) years in accordance with the provisions of article 22.

Article 34. The present Law is an instrument of public policy.

ARGENTINA

REGULATIONS TO LAW NO. 20,557. PROMULGATED BY DECREE NO. 413 OF 1973

Article 2. For the purpose of determining the percentages referred to in article 2 of the Law, no account shall be taken of shares other than voting shares representing the enterprise's power of decision, without prejudice to the other requirements laid down in paragraphs (b) and (c) of that article.

Article 6. The prohibition established at the beginning of article 6 (d) of the Law relates to the acquisition of shares, interests or other capital holdings owned by Argentine investors. The prohibition concerning movable or fixed assets covers all enterprises in which the majority of the capital carrying the power of decision is Argentine.

Article 9. If the foreign investment consists of capital goods, the goods concerned shall be new and shall represent the most advanced technology in their field, spare parts being allowed in the amount necessary to ensure the normal functioning of those goods for a reasonable period, which shall be stipulated in the investment agreement. The prospective investor shall show that the capital goods are necessary for the installation of the plant in question and that they will ensure full activity in its specific field on the part of the enterprise for which they are intended.

Article 10. The value of capital goods entering Argentina as foreign investment shall be the ruling price in foreign currency for exports of similar goods from their country of origin to the Argentine Republic; that value or if lower the ruling value on the domestic market of the country of origin shall be the value to be recorded.

The investor shall in that connexion submit a duly authenticated certificate issued by the competent body or institution of the country of origin stating the value of the goods on the market in question, together with an accountant's certificate, also duly authenticated, proving that the price of the goods recorded in the manufacturer's books is the same as that at which they are invoiced; these documents shall be approved by the accredited Argentine diplomatic or consular representative abroad.

Article 12. Bearer shares owned by foreign investors and representing capital in existing enterprises shall be converted to registered shares within the period of one (1) year following the official publication of the present Decree.

Article 14. In the case of foreign and mixed enterprises existing in Argentina which agree to be governed by Law No. 20557, the agreement shall last five (5) years and shall be automatically renewed for a similar period unless the supervisory authority decides not less than one (1) year prior to the expiry of the agreement not to renew it and requires the conclusion of an agreement containing arrangements for the gradual conversion of those enterprises into mixed or Argentine enterprises respectively, in which connexion it shall take into consideration the criteria laid down in the second paragraph of article 22 of the Law.

Article 17. Enterprises in which investments are to be made shall keep their books and statements of account in accordance with provisions which shall be issued by the supervisory authority upon appropriate advice from the Central Bank of the Argentine Republic, it being a requirement that foreign capital is shown separately.

Article 28. Capital goods and their spare parts entering Argentina from abroad in accordance with the provisions of Law No. 20557 may not be disposed of for a period of eight (8) years following the date of commissioning of the plant to which the investment was directed, except with the express permission of the supervisory authority, which may be given only:

(a) if the disposal of the goods results from the need to maintain or achieve optimum technological conditions through the replacement of the goods by others and if it ensures normal continuity in the activity of the enterprise as provided for in the respective investment agreement;

(b) if because of a change in market requirements it is of no advantage to the Argentine economy that the enterprise in which the investment has been made should continue all or some of its activities.

Article 30. As regards the indebtedness of foreign enterprises which is referred to in article 17 of the Law, "short-term domestic credit" means the obligations which they assume for periods not exceeding one (1) year in order to meet business or operating requirements, including tax or social welfare liabilities, to creditors who are natural or artificial persons of public or private law domiciled in Argentina.

Article 31. Foreign enterprises in existence on the date of official publication of the present Decree and indebted domestically to an extent greater than the maximum indebtedness stipulated by the supervisory authority shall gradually reduce their debts to below the stipulated level within a maximum period of six (6) months following the date on which the limitation in question becomes effective; this period may be extended for a further six months for duly substantiated reasons.

Where this reduction affects transactions maturing outside that period, it shall take place as and when those transactions mature.

Article 32. The supervisory authority shall in every investment agreement stipulate the maximum indebtedness incurrable by foreign enterprises to natural or artificial persons of public or private law domiciled in Argentina in the light of the circumstances of each case and on the basis of the capital of the enterprise plus reserves, calculated in terms of the liability attributable to its assets as revalued in accordance with the criteria of the Central Bank of the Argentine Republic for grants of credit by financial institutions.

Article 37. The supervisory authority shall require investors to furnish proof of the existence of capital abroad and also, in the case of enterprises not of recognized standing, to indicate the non-Argentine source of such capital. Proof shall be furnished in all cases of the use of funds for the specific purposes of the investment and evidence shall be requirable of the employment of capital goods and their spare parts.

Article 39. The supervisory authority shall specify the minimum information to be contained in investment proposals. The information must include:

(a) the particulars of the foreign investor;

(b) the particulars of the domestic enterprise receiving the investment;

(c) the form that the investment of foreign capital will take;

(d) the manner in which the various requirements laid down in article 5 of the Law will be met;

(e) particulars concerning the matters covered by articles 7 and 10 of the Law, where preferential treatment is sought under those articles;

(f) in the case of foreign or mixed enterprises, the arrangements for their gradual conversion into Argentine enterprises where this is to be the case;

(g) an assessment of the economic impact of the investment and especially its effect on the Argentine balance of payments.

Article 40. For the purposes of verifying information supplied by enterprises or establishing compliance with the conditions of the investment agreement, the supervisory authority shall be entitled to inspect the books and plant of enterprises and ascertain the manner in which they carry on the business connected with the foreign investment.

Article 42. The proposed foreign investment shall not cause harm, either at the time or subsequently, to rational and efficient industry already operating in Argentina; the principal information given in the application shall therefore be publicized as provided in the following articles, without prejudice to the trade secrets of the applicant.

Article 43. Within a period of not more than five (5) days after the proposal is deemed to have been submitted, the investor shall publish announcements containing the following particulars in the Official Gazette and in a mass-circulation newspaper in the federal capital for three (3) consecutive days:

(a) the treatment for which he is applying;

(b) the goods to be produced or the services to be rendered, with an indication where appropriate of the common and technical names which readily identify them and of the NADI, BTN-LAFTA and NADE tariff headings;

(c) the minimum and maximum capacities of the proposed plant;

(d) the total amount of the investment, with an express indication of the portion which is to constitute fixed assets and the amount and date of each stage of investment where there is more than one stage;

(e) the amount of direct investment, broken down according to the form it will take;

(f) the place of installation;

(g) the period which will elapse between the industrial plant or the project, as the case may be, receiving approval and being commissioned.

Article 44. Within the fifteen (15) days following the date of publication of the last of the announcements referred to in the preceding article, existing enterprises which produce goods similar to or competitive with those that the proposed investor intends to manufacture may submit the following information, either individually, jointly or through representative bodies:

(a) production capacity existing in Argentina;

(b) number of establishments;

(c) number and capacity of principal establishments;

(d) date of commencement of activities and age of existing equipment;

(e) price of the products when first sold on the domestic market;

(f) price c.i.f. Buenos Aires of similar goods produced abroad;

(g) BTN-LAFTA tariff classification and situation as regards special national tariff schedules and complementarity agreements;

(h) volume and value of sales in the past three (3) years;

(i) volume and value of imports and exports in the past three (3) years, with an indication of their origin and destination.

Any information submitted shall be kept in special files and shall be reviewed by the supervisory authority within the thirty (30) working days following the expiry of the period allowed for its submission.

The applications to which the information relates shall not go forward until the information has been reviewed.

Article 46. Before issuing its final report on the proposed investment the supervisory authority shall request those Departments of State answerable to the Ministry of the Economy which are specifically responsible for the proposed activity, as well as the Central Bank of the Argentine Republic and other official banks, where appropriate, to state their views within not more than thirty (30) days on the acceptability of the project in question as regards the aspects of it which concern them. In addition, where the proposal includes the entry into Argentina of capital goods and their spare parts, the supervisory authority shall forward particulars of the goods to the Department of State for Industrial Development, for a report on whether they are produced reasonably economically in Argentina in a manner in which the requirements of the project would be satisfied.

Article 47. If the review shows the project to be unacceptable or the proposal to be at variance with the requirements of the Law or the present decree, the supervisory authority shall issue a duly substantiated decision rejecting the application, notify the firm which has proposed the investment and then order the papers to be filed.

ARGENTINA

LAW NO. ... ON INDUSTRIAL DEVELOPMENT

Article 1. A system of industrial promotion is hereby instituted for the establishment of new industrial activities, the expansion, improvement and modernization of existing industries, the furtherance of geographical decentralization, the national development of technology and the consolidation of Argentine-owned industry. The system is represented by the present law, the general regulations to it and any regional, sectoral or special decrees which may be issued.

Article 2. Industry shall be promoted through the adoption of economic policy measures which are based on selectiveness and planning, with State support going exclusively to those units of production which are essential to Argentine needs or demand preference because of them. The objectives of this process are as follows:

I. GENERAL

(a) To further the scientific, technological and economic independence of Argentina, thus ensuring that the power of decision in the industrial sector rests with the nation.

(b) To achieve a high rate of growth of industrial production.

(c) To raise all branches of industry to an appropriate level as regards modern technology and promote the development of a national technology that will help to eliminate dependence on foreign countries.

(d) To match the objectives of industrial promotion to the socio-economic needs of the population; no benefits shall be granted if these needs are not taken into account.

(e) To protect the environment and living conditions against the pollution and deterioration which industry can cause, to the detriment of human beings and natural resources.

(f) To confine industrial promotion to enterprises to which a majority of the capital is Argentine-owned.

(g) To promote production and full employment before capital profit.

(h) To expand industrial sectors that can contribute to import substitution and increase exports of manufactures.

(i) To improve the cost structure of existing industry and thus facilitate its growth.

(j) To promote basic and applied research in both existing and future industries.

(k) To ensure the development of the industries necessary for national defence.

(l) To support the expansion and strengthening of small and medium-sized industry.

(ll) To create conditions conducive to industrial investment and capital formation in industry.

(m) To provide fitting standards of living for the staff of the enterprise concerned.

III. BENEFICIARIES

Article 16. Only Argentine enterprises engaged or proposing to engage in industrial activities or activities that require complementary industrialization may benefit from promotional treatment. The owners of the enterprises may be:

(a) natural persons domiciled in Argentina as provided in article 89 of the Civil Code;

(b) artificial persons of private or public law which are constituted in Argentina in accordance with Argentine legislation, have their legal domicile and principal place of business in Argentine territory and are managed and controlled by persons domiciled in Argentina within the meaning of article 89 of the Civil Code, provided their regulations contain no stipulation conferring lesser rights on their members than the rights to which their actual contributions of capital entitle them and provided the ownership of that capital is identified by name.

Article 17. For the purposes of the present Law and of article 3 of Law No. 19063, an enterprise shall be regarded as an Argentine enterprise if:

(a) in accordance with the definitions contained in the Foreign Investment Law it falls within the categories of a mixed enterprise or an Argentine enterprise;

(b) in the case of a company, as far as the power of decision is concerned, a majority of the shares, interests or other capital holdings in the enterprise which carry voting rights are owned by persons domiciled in Argentina;

(c) eighty (80) per cent of the management of the enterprise and ninety (90) per cent of its professional, technical and/or executive staff are Argentines who are domiciled by law in Argentina and who are qualified under the pertinent existing national or provincial legislation, where the requirement exists, to carry on their profession and are listed in the appropriate professional register;

(d) there are no stipulations in the regulations of the enterprise or under any contract that compel persons who have contributed its capital to repatriate capital, interest or dividends to a foreign country;

(e) the enterprise is genuinely established in Argentina in accordance with the principle of economic effectiveness, as determined by the supervisory authority, the nationality of the enterprise being reflected in its economic, financial, commercial, technological and administrative conduct and policy;

(f) the enterprise is independent of any public or private bodies abroad.

Article 18. The following shall not benefit from promotional treatment:

(a) Enterprises whose regulations, contracts or licensing or technical assistance arrangements contain stipulations which restrict national ownership, national technology, national industry or national trade, limit exports or contravene the legislation which is in force on the date of application for acceptance; this is a matter for the judgement of the supervisory authority.

BRAZIL

Law No. 4,131 of 1962 concerning foreign capital

Article 1. For the purposes of this law, foreign capital shall be considered to be any goods, machinery or equipment imported into Brazil without initial expenditure of foreign currency and intended for the production of goods or services, as well as any financial or monetary resources introduced into the country for use in economic activities, provided that, in both cases, they are owned by natural or artificial persons resident, domiciled or having their business headquarters abroad.

Article 2. Any foreign capital invested in Brazil shall receive the same treatment in law as that accorded to national capital in the same conditions, other than those specified in this law.

Article 3. A special service is hereby established, within the Directorate of Currency and Credit (SUMOC), for the registration of foreign capital, irrespective of the form in which it enters the country, and of external financial operations. It shall record the following:

(a) foreign capital entering the country in the form of direct investments or loans, whether in cash or in goods;

(b) remittances to foreign countries representing repatriation of capital or a return on such capital, profits, dividends, interest, amortization, royalties or payments for technical assistance, or remittances for any other purpose that entails the transfer of income abroad;

(c) reinvestments of profits derived from foreign capital;

(d) changes in the monetary value of the capital of the enterprises concerned, effected in accordance with the legislation in force.

Sole paragraph. The registration of the reinvestments referred to in subparagraph is required, even in the case of an artificial person with headquarters in Brazil but affiliated to foreign enterprises or controlled by natural or artificial persons holding a majority of the shares and resident or having their headquarters abroad.

Article 4. The registration of foreign capital shall be effected in the currency of the country of origin, and that of the reinvestment of profits simultaneously in Brazilian currency and in the currency of the country to which they could have been remitted; the conversion shall be effected at the average rate of exchange for the period during which it is established that the reinvestment was actually effected.

Sole paragraph. If the capital is in the form of goods, it shall be registered in accordance with the price of those goods in the country of origin or, in the absence of satisfactory evidence, in accordance with the book value found to have been given them by the enterprise receiving the capital, or in accordance with any method of assessment that may be established by the regulations.

Article 5. Foreign investments shall be registered within 30 days of the date of their entry into the country, regardless of the payment of any tax or fee. Reinvestments of profits shall be registered within the same period, starting on the date of approval of the relevant entry in the accounts by the competent department of the enterprise concerned.

1. Foreign capital that is already in Brazil, and the reinvestment of the profits on such capital, shall also be subject to registration, for which application shall be made by the owners of the capital or by the responsible personnel of the enterprises in which they were invested within 180 days of the date of promulgation of this law.

2. The SUMOC Board shall determine what records must be produced in order that the registration of capital referred to in the preceding paragraph may be granted.

Article 6. SUMOC shall take the necessary action to ensure that the register containing the data referred to in the preceding articles is kept up to date, and the enterprises concerned are required to furnish any information that SUMOC may request of them.

Article 7. For the purposes of this law, reinvestments shall be considered to be income which is obtained by enterprises established in Brazil and credited to persons resident and domiciled abroad, but which is invested again in the enterprise from which it was derived or in another sector of the national economy.

Article 8. Remittances of interest derived from loans, credits and financing operations shall be treated as refunds of capital in the case of that part of the amount concerned which exceeds the rate of interest stipulated in the contract recorded in the register. SUMOC may challenge and reject that part of the rate which exceeds the rate in force on the date of the remittance for operations of the same nature and conditions in the money market of the country in which the loan, credit or financing operation originated.

Article 9. Natural or artificial persons who wish to transfer sums abroad that represent profits, dividends, interest, amortization or royalties, or payments for technical, scientific, administrative or other assistance shall submit to the competent departments of SUMOC and the Income Tax Division the contracts and documents that may be considered necessary to justify the operation.

1. Remittances to foreign countries shall be subject to the registration of the enterprise concerned with SUMOC and the presentation of evidence of payment of any income tax due.

2. In cases where registration has been applied for but not yet granted or refused, transfers of the kind referred to in this article may be effected within a period of one year from the date of this law, against a signed declaration of responsibility by the enterprise concerned; this period may be extended on three consecutive occasions by decision of the President of the Republic, on the basis of a statement by the Minister of Finance.

3. In the situation provided for in the preceding paragraph, remittances shall be subject to the presentation of evidence of payment of income tax.

...

Article 15. Any person committing a fraudulent act in connexion with a customs or foreign exchange operation by under-invoicing or over-invoicing exports or imports of goods or merchandise and found guilty as a result of ordinary administrative proceedings, in which he shall have full defence facilities, shall be liable to a fine, to be imposed by SUMOC Board, of up to 10 times the value of the under-invoiced or over-invoiced amounts, or shall be prohibited from engaging in export or import operations for a period of from one to five years.

Article 16. The Government shall be authorized to conclude agreements on administrative co-operation with foreign countries, with a view to the exchange of information on matters relating to taxation or foreign exchange, including the remittance of profits and royalties, payment for technical and similar assistance services, the value of imported goods, the rental of cinematographic films, machinery and so on, and any other data that may serve as a basis for the levying of taxation.

Sole paragraph. The Government shall endeavour to conclude agreements on fiscal co-operation with the states and municipalities, with a view to co-ordinating the taxation control carried out by federal, state and municipal departments and achieving greater efficiency in tax inspection and the collection of revenue and in the repression of tax frauds and evasion.

...

Article 20. The Executive shall, by means of appropriate regulations, establish model account forms and general book-keeping guidelines, standardized for groups of activities of the same nature and adaptable to the needs and possibilities of enterprises of different sizes.

Sole paragraph. When the model account forms and the general book-keeping guidelines applicable to them have been approved by means of appropriate regulations, all bodies corporate engaged in each particular group of activities shall be required to cause their book-keeping operations to conform to them within the time-limits set in the regulations, which shall be such as to permit the orderly adaptation of the systems previously used.

Article 21. The capital and credits owned by natural or artificial persons resident, domiciled or having their headquarters abroad, and registered with SUMOC must be shown separately in the balance sheets of the enterprises concerned, including limited-liability companies.

Article 22. The same distinction shall be made in profit and loss account, in order to identify the portion of the profits, dividends, interest and other income received by natural or artificial persons resident, domiciled or having their headquarters abroad, whose capital is registered with SUMOC.

. . .

Article 28. Whenever there is a serious lack of equilibrium in the balance of payments or there are sufficient grounds for believing that such a situation may be imminent, the SUMOC Board may impose restrictions, for a limited period, on imports and on the remittance of the earnings of foreign capital and may, for this purpose, grant the Bank of Brazil a complete or partial monopoly of foreign exchange operations.

1. In the circumstances provided for in this article, remittances representing a repatriation of capital shall be prohibited and the remittance of profits thereon shall be limited to 10 per cent per annum of the capital and reinvestments registered in the currency of the country of origin under the provisions of articles 3 and 4 of this law.

2. Any income exceeding the percentage fixed by the SUMOC Board under the preceding paragraph shall be notified to SUMOC, which, on the assumption that the restriction referred to in this article continues in force for more than one financial year, may authorize the remittance, in the following year, of the excess amounts, in cases when profits in that year do not reach the limit referred to in the aforesaid paragraph.

3. In the circumstances provided for in this article, the SUMOC Board may limit the remittance of sums of money representing royalties and payments for technical, administrative or other assistance to a maximum annual aggregate total of 5 per cent of the gross earnings of the enterprise in question.

4. Again in the circumstances covered by this article, the SUMOC Board shall be authorized to issue instructions limiting the expenditure of foreign currency under "international travel".

5. Restrictions shall not, however, be imposed on remittance of interest and capital repayment instalments provided for in duly registered loan contracts.

...

Article 34. Operations involving the purchase of currency for the remittance of profits, interest, royalties, technical assistance payments or the repatriation of capital shall in no circumstances, irrespective of the foreign exchange regulations in force, benefit from more favourable conditions than those in force for remittances constituting payment for imports of a general nature referred to in Law No. 3,244 of 14 August 1957.

...

Article 37. The National Treasury and the official federal and state public credit bodies, including mixed-economy companies controlled by them, may not guarantee loans, credits or financing obtained abroad by enterprises in which the majority of voting shares are owned by persons not resident in Brazil unless they have been authorized to do so by a decree of the Executive.

Article 38. Enterprises in which the greater part of the capital is foreign or branches of enterprises whose headquarters are situated abroad shall not have access to the credit provided by the bodies and institutions referred to in the preceding article until they produce evidence that they have begun their operations, except in the case of projects considered to be of outstanding importance to the national economy, and by special permission from the Council of Ministers.

Article 39. The credit institutions referred to in article 37 may not grant loans, credits or financing for new investments in the fixed assets of enterprises in which the majority of voting shares are owned by persons not resident in Brazil unless the investments in question are intended for economic sectors or regions of outstanding national importance, as defined and enumerated by decree of the Executive, after consultation with the National Economic Council.

Sole paragraph. The use of resources derived from legally established public investment funds shall also be subject to the provisions set forth in this article.

Article 40. Financing and investment companies may not place on the national capital market shares and bonds issued by enterprises controlled by foreign capital or subordinate to enterprises having their headquarters abroad unless the said shares or bonds have voting rights.

Article 41. For the purposes of this law, the following types of income shall be subject to taxation at source:

(a) dividends on bearer shares and any bonuses on such shares;

(b) interest or any other income or return derived from bearer bonds, known as "partes beneficiárias" or "founder's shares";

(c) profits, dividends and any other earnings or interest on registered shares or any registered stock constituting the capital of artificial persons, received by natural or artificial persons resident, domiciled or having their headquarters abroad, or by branches or subsidiaries of foreign enterprises.

Article 42. Artificial persons in which foreign capital predominates or which are branches or subsidiaries of enterprises whose headquarters are situated abroad shall be subject to the regulations and rates of income tax established in the legislation relating to this tax.

Article 43. The total net profits and dividends actually remitted to natural or artificial persons resident or having their headquarters abroad shall be subject to a supplementary income tax if the average amount of such remittances, over a three-year period beginning in 1963, exceeds 12 per cent of the capital and reinvestments registered in accordance with articles 3 and 4 of this Act.

1. The supplementary tax referred to in this article shall be levied in accordance with the following schedule:

- Between 12 per cent and 15 per cent of profit on capital and reinvestment: 40 per cent;

- Between 15 per cent and 25 per cent of profits: 50 per cent; Over 25 per cent of profits: 60 per cent.

2. This supplementary tax shall be deducted and collected at source on the occasion of any remittance exceeding the three-yearly average referred to in this article.

Article 44. The aforesaid tax shall be increased by 20 per cent in the case of enterprises engaged in economic activities of minor significance for the national economy, taking into account their geographical situation and as defined in a decree of the Executive, after consultation with the National Economic Council and the SUMOC Board.

...

Article 50. Foreign banks authorized to operate in Brazil shall be liable to the same prohibitions or restrictions as those imposed under the legislation in force in the financial centres in which their headquarters are situated on any Brazilian bank that may wish to establish branches in those centres.

Article 51. Foreign banks whose headquarters are established in financial centres where there are legal restrictions on the operation of Brazilian banks may not acquire more than 30 per cent of the voting shares of national banks.

...

Article 53. The Council of Ministers may, after consultation with the National Economic Council, order by decree:

(i) that the investment of foreign capital in specific activities should be effected in accordance with a scale of priorities and in such a way as to benefit the less developed areas of the country;

(ii) that the capital thus invested should, to a greater or lesser degree, be exempt from the restrictions established in article 28;

(iii) that similar treatment should be accorded to capital invested in activities considered to be important to the national economy.

Article 54. The Council of Ministers shall be authorized to promote the conclusion of agreements and conventions with the States members of the Latin American Free Trade Association with a view to the adoption by those States of standard legislation on the treatment to be accorded to foreign capital.

Article 55. In collaboration with the Brazilian Geographical and Statistical Institute, SUMOC shall periodically conduct a survey of foreign capital invested in Brazil.

Article 56. These surveys shall coincide with the general Brazilian Census and shall record the situation of foreign enterprises and capital on 31 December of the preceding year.

Article 57. SUMOC shall be responsible for making the arrangements and preparing the forms for the survey referred to in the preceding articles, in order to obtain a comprehensive analysis of the situation and movement of foreign capital and of the yield obtained.

Sole paragraph. On the basis of these surveys, SUMOC shall prepare a comprehensive and detailed report for submission to the Council of Ministers and the National Congress.

Article 58. Any violations of this law shall, without prejudice to the specific penalties mentioned therein, be punishable by a fine of 20 to 50 times the highest minimum wage in force in Brazil. The fines shall be imposed by SUMOC in the manner prescribed in the regulations or instructions issued for this purpose.

Article 2 of Law No. 4,390 of 1964

Remittances of profits abroad in the case of foreign capital invested in the production of luxury goods and services, as defined in a decree of the Executive, after consultation with the National Economic Council, shall be limited to 8 per cent per annum of the capital registered with SUMOC.

1. Any remittances of profits in excess of the limit established in this article shall be held to constitute repatriation of capital and shall be deducted from the amount recorded in the register for the purpose of future transfers. The reinvestment of these amounts in the enterprises from which they were derived shall nevertheless be permitted in cases where they give rise to the production of goods or services, or in those regions and sectors of activity considered to be of importance to the national economy, as defined by decree of the Executive, after consultation with the National Economic Council.

2. In the cases provided for in Law No. 4,131 of 3 September 1962, the transfer of profits derived from the capital referred to in this article shall be limited to a maximum in any one year of 5 per cent of the amount registered in the manner provided for in articles 3 and 4 of that law.

MEXICO

LAW FOR THE PROMOTION OF MEXICAN INVESTMENT AND THE REGULATION OF FOREIGN INVESTMENT

CHAPTER I

PURPOSE

Article 1. The present Law is of public interest and shall be generally observed in Mexico. Its purpose is to promote Mexican investment and regulate foreign investment in order to stimulate just and balanced development and consolidate the economic independence of the country.

Article 2. For the purposes of the present Law, foreign investment is investment undertaken by:

(i) foreign juridical persons;
(ii) foreign natural persons;
(iii) foreign economic units which do not have juridical personality;

and

(iv) Mexican enterprises with a majority of foreign capital or in which foreigners are in any way empowered to determine the conduct of the enterprise.

Foreign investment in the capital of enterprises, in the acquisition of assets and in the operations to which the present Law refers shall be subject to its provisions.

Article 3. Foreigners who acquire property of any kind in the Mexican Republic agree by so doing to consider themselves as Mexican nationals with regard to that property and not to invoke the protection of their Governments in respect of it, under penalty, if they do so, of forfeiting to the Nation the property they have acquired.

Article 4. The following activities are reserved exclusively for the State:

(a) petroleum and other hydrocarbons;
(b) basic petrochemicals;
(c) the exploitation of radioactive minerals and the generation of nuclear energy;
(d) mining in the circumstances provided for in the law on the subject;
(e) electricity;
(f) railways;
(g) telegraphic and wireless communications; and
(h) other activities as provided for in specific laws.

The following activities are reserved exclusively for Mexicans or Mexican companies from which foreigners are expressly debarred:

(a) radio and television;

(b) urban and interurban motor transport and motor transport on federal highways;

(c) domestic aviation and shipping;

(d) forest exploitation;

(e) gas distribution; and

(f) any other activities as provided for in specific laws or regulations issued by the Federal Executive.

Article 5. Foreign investment will be allowed in the following activities in the capital proportions indicated:

(a) Exploitation and use of minerals.

Concessions may not be granted or transferred to foreign natural persons or foreign companies. Foreign investment in companies engaging in this activity may not exceed 49 per cent in the case of exploitation and use of minerals subject to ordinary concessions and 34 per cent in the case of special concessions for the exploitation of national mining reserves.

(b) Secondary petrochemicals: 40 per cent.

(c) Manufacture of motor vehicle parts: 40 per cent.

(d) As provided for in specific laws or regulations issued by the Federal Executive.

In cases where legal provisions or regulations do not specify a percentage, foreign investment may not exceed 49 per cent of the capital of the enterprise and foreign investors may not in any way be empowered to determine the conduct of the enterprise.

The National Commission on Foreign Investment may decide on an increase in or reduction of the percentage mentioned in the preceding paragraph where it considers that the economy of the country justifies it, and may determine the conditions under which foreign investment shall be received in specific cases.

The participation of foreign investors in the administrative organs of the enterprise may not exceed their participation in its capital.

Where laws or regulations exist for a given branch of activity, foreign investment shall be subject to the percentages and conditions stipulated in those laws or regulations.

Article 6. For the purposes of the present Law, investments made by foreign immigrants permanently resident in Mexico shall be considered as Mexican investments except where the immigrants concerned are linked by virtue of their business activity to foreign centres of economic decision. This provision shall not apply in geographical areas or economic activities that are reserved exclusively for Mexicans or Mexican companies from which foreigners are expressly debarred or that are specifically regulated.

The status and business activities of immigrants who are not permanently resident in Mexico shall be governed by the provisions of the General Law on Population.

Article 7. Foreigners, foreign companies and Mexican companies from which foreigners are not expressly debarred may not acquire the direct ownership of land and water situated in a 100-kilometre belt along the country's frontiers or in a 50-kilometre belt on its coasts.

Foreign companies may not acquire the ownership of land and water or obtain concessions for water exploitation.

Foreign natural persons may acquire ownership of the property referred to in the preceding paragraph with the prior permission of the Department of Foreign Affairs and after entering into the agreement referred to in sub-paragraph I of the fourth paragraph of article 27 of the Constitution.

CHAPTER II

ACQUISITION OF ESTABLISHED ENTERPRISES OR OF THE CONTROL OF ESTABLISHED ENTERPRISES

Article 8. Authorization by the Department responsible for the branch of economic activity involved shall be required where one or more of the natural or juridical persons referred to in article 2 acquires or acquire, by one or more acts or a series of acts, more than 25 per cent of the capital or more than 49 per cent of the fixed assets of an enterprise. The leasing of an enterprise or of the assets essential to its business shall be deemed an acquisition of assets.

Also requiring authorization are acts whereby the management of an enterprise devolves upon foreign investors or whereby foreign investors are in any way empowered to determine the conduct of the enterprise.

The authorizations to which this article refers shall be granted where compatible with the national interest following a decision by the National Commission on Foreign Investment.

Acts performed without such authorization shall be null and void.

Article 9. The National Commission on Foreign Investment may, where it deems it desirable, grant Mexican investors a preferential right to any acquisition covered by the preceding article.

This preferential right shall be granted for a period not exceeding the 90 days following the date on which the terms of the offer in question are made known. The period may be extended for a further 90 days upon the application of an interested party.

Article 10. The National Commission on Foreign Investment shall adopt such measures as it deems fit to promote the acquisition by Mexicans of the capital or fixed assets, where offered for sale, of enterprises established in Mexico.

CHAPTER III

THE NATIONAL COMMISSION ON FOREIGN INVESTMENT

Article 11. The National Commission on Foreign Investment is hereby created and shall be composed of the Secretaries of the Departments of the Interior, Foreign Affairs, Finance and Public Credit, National Resources, Industry and Trade, and Labour and Social Welfare and the Secretary of the Presidency. The Under-Secretaries appointed by each of these shall act as alternates.

Meetings shall be chaired in rotation by the Secretary present in the order of precedence established in the above paragraph. The Commission shall meet at least once a month.

The Commission shall be assisted by an Executive Secretary appointed by the President of the Republic.

Article 12. The National Commission on Foreign Investment shall have the following functions:

(i) To decide in accordance with article 5 of the present Law on an increase in or reduction of the percentage of possible participation of foreign investment in the country's various geographical areas or economic activities where there are no legal provisions or regulations that establish a fixed percentage, and to stipulate the conditions on which such investment may take place.

(ii) To decide on percentages and conditions for foreign investment in specific cases which merit special treatment because of their particular circumstances.

(iii) To decide on prospective foreign investment in enterprises established or to be established in Mexico, or in new enterprises.

(iv) To decide whether existing foreign investment in Mexico shall participate in new fields of economic activity or new ranges of production.

(v) To act as a compulsory advisory body on foreign investment matters for offices of the Federal Executive; decentralized official bodies; state enterprises;

trust institutions responsible for trusts established by the Federal Government or local governments; and the National Securities Commission.

(vi) To lay down criteria and requirements for the application of legal provisions and regulations regarding foreign investment.

(vii) To co-ordinate action undertaken by offices of the Federal Executive, decentralized official bodies and state enterprises in the discharge of their foreign investment functions.

(viii) To submit draft laws, draft regulations and administrative measures concerning foreign investment to the Federal Executive for consideration.

(ix) Any other functions conferred on it by the present Law.

Article 13. In determining whether foreign investment shall be authorized and in deciding percentages and conditions for it the Commission shall take into consideration the following factors and characteristics concerning the investment in question:

(i) the investment should complement domestic investment;

(ii) it should not displace domestic enterprises which are operating satisfactorily or be directed to fields adequately catered for by domestic enterprises;

(iii) its positive effects on the balance of payments and especially on the increase of exports;

(iv) its effect on employment, taking into account the job opportunities it creates and the wages it provides;

(v) the employment and training of Mexican technicians and managerial staff;

(vi) the use of domestic inputs and components in the manufacture of the products concerned;

(vii) the extent to which the investment is operationally financed from abroad;

(viii) diversification of sources of investment and the need to foster Latin American regional and subregional integration;

(ix) the contribution of the investment to the progress of relatively underdeveloped areas or regions;

(x) the investment should not enjoy any monopoly of the domestic market;

(xi) the capital structure of the branch of economic activity involved;

(xii) the technology provided by the investment and its contribution to national technological research and development;

(xiii) its effect on price levels and product quality;

(xiv) the investment should not harm national social and cultural values;

(xv) the importance of the activity in question in the context of the national economy;

(xvi) the extent to which the foreign investor is identified with the national interest and his involvement with foreign centres of economic decision; and

(xvii) in general the extent to which it helps the achievement of national development goals and is consistent with national development policy.

Article 14. The Executive Secretary shall have the following functions:

(i) to represent the Commission;

(ii) to implement its decisions;

(iii) to regulate the internal organization, administration and operation of the secretariat for which he is responsible;

(iv) to undertake studies as requested by the Commission;

(v) to draft the Commission's annual budget for its consideration and approval if acceptable;

(vi) to prepare an annual report for the Commission on its activities;

(vii) to dispose of the Commission's budget and appoint its technical and administrative staff; and

(viii) any other functions conferred on him by the present Law or assigned to him by the Commission.

Article 15. Applications for the authorizations referred to in the present Law shall be transmitted to the Executive Secretary of the National Commission on Foreign Investment.

Decisions adopted by the Commission shall be communicated to the appropriate Departments of State, which shall issue the requisite authorizations in conformity with those decisions.

Article 16. Departments of State shall, within their respective spheres of responsibility, decide specific cases according to the general criteria laid down by the National Commission on Foreign Investment and the provisions of the present Law.

Article 17. Prior permission shall be obtained from the Department of Foreign Affairs for foreigners to acquire immovable property and for companies to be formed or modified. Permissions shall be issued in accordance with the provisions of the law and any decisions adopted by the National Commission on Foreign Investment.

CHAPTER IV

TRUST REGIME FOR FRONTIER AND COASTAL AREAS

Article 18. In pursuance of sub-paragraph I of article 27 of the Constitution of the United Mexican States and the corresponding Organic Law, the Department of Foreign Affairs is hereby empowered to approve in every given case the grant of permission for credit institutions to acquire as trustees the ownership of immovable property intended for industrial activity and tourism and situated in a 100-kilometre belt along the country's frontiers or in a 50-kilometre zone along its coasts, provided that the purpose of the acquisition is to permit the beneficiaries of the trust to use and exploit the property in question and that no rights in rem are created over it. Registered irredeemable certificates of interest may be issued in connexion with such property.

Article 19. The Department of Foreign Affairs shall decide on the creation of the trusts referred to in the preceding article, taking into consideration the social and economic aspects of the operations concerned. The National Commission on Foreign Investment shall lay down the criteria and procedures for decisions regarding trust property applications.

Article 20. The duration of the trusts referred to in this chapter shall in no case exceed 30 years. The trust institution shall at no time part with the ownership of the immovable property concerned; it shall be entitled to lease it for terms not exceeding 10 years and upon expiration of the trust it may convey the property to persons legally entitled to acquire it.

The Federal Government reserves the right to verify at any time whether the purposes of the trust are being fulfilled.

Article 21. Certificates of interest issued in connexion with such trust property shall have the following characteristics:

(a) they shall not represent for the beneficiary any rights other than those stipulated in sub-paragraphs (a) and (c) of article 228(a) and in article 228(e) of the General Law on Securities and Credit Operations and shall not confer the right to any proportional part of the rights of ownership of the immovable property held in trust;

(b) they shall be registered and irredeemable; and

(c) they shall create the right to exploit the immovable property concerned and to dispose of any liquid earnings obtained from it by the beneficiary, as determined by the instrument of issue. They shall also create the right to the net proceeds of any sale of the trust property by the trust institution to persons legally entitled to acquire that property.

Article 22. Permission from the Ministry of the Interior shall not be required under this chapter for the acquisition by foreigners of rights arising under these trusts.

CHAPTER V

THE NATIONAL REGISTRY OF FOREIGN INVESTMENTS

Article 23. The National Registry of Foreign Investments is hereby established. The following shall be recorded in it:

(i) foreign natural or juridical persons which effect investments governed by the present Law;

(ii) Mexican companies in which capital is held by the persons referred to in article 2 of the present Law;

(iii) trusts in which foreigners participate and whose purpose is to conduct operations governed by the present Law;

(iv) instruments of title which represent capital owned by foreigners or are delivered as security for the benefit of foreigners, and any transfers thereof; and

(v) decisions adopted by the Commission.

The regulations shall determine the organization of the Registry and prescribe how and when information is to be furnished to it.

Article 24. The National Registry of Foreign Investments shall be responsible to the Department of Industry and Trade and shall be under the control of the Executive Secretary of the Commission.

CHAPTER VI

GENERAL PROVISIONS

Article 25. Instruments of title representing the capital of enterprises shall be of the registered kind in the following cases:

(i) to the extent and in the manner provided by specific laws or regulations or by any decision of the National Commission on Foreign Investment;

(ii) where they are owned by the persons, units or enterprises referred to in article 2 of the present Law.

Bearer instruments may not be acquired by foreigners without the prior approval of the National Commission on Foreign Investment and in such cases they shall be converted into registered instruments. This requirement and the penalties provided in article 28 shall be noted on the instruments concerned.

Article 26. The National Commission on Foreign Investment may consult public institutions and private organizations of employers, workers, farmers, professional or other qualified practitioners or persons in any other walk of life as it deems fit for the proper discharge of its functions.

Offices of the Federal Executive, decentralized official bodies and state enterprises shall provide the Commission with any information which it may ask them to furnish in order to enable it to discharge its functions properly.

Article 27. Companies required to be recorded in the National Registry of Foreign Investments which are not so recorded shall not pay dividends. Dividends shall likewise not be paid on instruments of title which require to be recorded in the National Registry of Foreign Investments but are not so recorded.

Companies required to be recorded and failing to meet that obligation shall be entered with the Registry by the authorities or at the request of any member of the company.

Article 28. Acts which infringe the provisions of the present Law and acts which require to be recorded in the National Registry of Foreign Investments but are not so recorded shall be null and void and therefore of no avail before any authority. In addition, the Department of State concerned shall fine the offender an appropriate amount not exceeding the value of the offending transaction. The penalty for unquantifiable infringements shall be a fine of up to 100,000 pesos.

Article 29. Administrators, directors, general and other managers, supervisory officials and members of supervisory organs of enterprises shall be severally liable in respect of their duties for failure to observe the obligations laid down in the present Law. The penalty for failure to comply with these obligations shall be a fine of 100,000 pesos. The penalties in question shall be imposed by the Department of Industry and Trade after a hearing of the party concerned.

Article 30. Notaries and business agents shall insert the authorizations required by the present Law in all documents in which they act. They shall be deprived of their licence if they authenticate documents which do not contain the necessary authorizations.

Persons in charge of public registers shall not register the above documents where they do not contain the necessary authorization. Breach of this obligation shall result in loss of employment.

Article 31. Any person who by misrepresentation enables any of the persons, enterprises or economic units referred to in article 2 of the present Law to enjoy or dispose *de facto* of property or rights which are reserved for Mexicans or the acquisition of which is subject to requirements or authorizations that have not been met or obtained as the case may be shall be liable to up to nine months' imprisonment and a fine of up to 50,000 pesos.

INTERIM PROVISIONS

One. The present Law shall enter into force 60 days after its publication in the Official Gazette of the Federation.

Two. Bearer instruments of title which represent the capital of enterprises established in Mexico and which are owned by the persons, enterprises or units referred to in article 2 of the present Law shall be converted into registered instruments as provided in article 25 and be presented for recordation within a period not exceeding the 180 days following the date on which the present Law enters into force. For such conversion to take effect, it shall suffice if the instrument concerned or an attachment to it is marked accordingly by the issuing company. Recordation shall product the effects of the approval referred to in article 25.

Three. Persons required to be recorded in the National Registry of Foreign Investments shall comply with that obligation within the 180 days following the date on which the present Law enters into force.

Four. Until such time as the National Commission on Foreign Investment lays down the criteria and procedures referred to in article 19 of the present Law, the applications referred to in that article shall be decided by the Department of Foreign Affairs on the basis of the opinion of a Consultative Commission composed of a representative of that Department, who shall chair the Commission, and of representatives of the Departments of the Interior, Finance and Public Credit, Industry and Trade, and Tourism.

Five. All legal provisions and regulations conflicting with the present Law are hereby abrogated.

MEXICO

DECREE ESTABLISHING THE INCENTIVES, ASSISTANCE AND FACILITIES TO BE GRANTED TO THE INDUSTRIAL ENTERPRISES REFERRED TO IN THE DECREE OF 23 NOVEMBER 1971

BENEFICIARIES

Article 1. The following enterprises may benefit from the incentives, assistance and facilities referred to in the present decree:

(i) enterprises engaged in an industrial activity which is new to the municipality or district in which they are established;

(ii) industrial enterprises established for the industrialization of agricultural or fisheries products or general raw materials from their area, whether or not their activity is new to the municipality or district in question;

(iii) enterprises engaged in industrial activities new to Mexico;

(iv) industrial enterprises that remedy other than temporary shortages in national consumption which in the past year have exceeded 20 per cent of that consumption;

(v) industrial enterprises that rationalize their production and increase their efficiency and productivity to the benefit of national consumers;

(vi) industrial enterprises that expand their productive capacity;

(vii) enterprises that dispose of immovable property which is a fixed asset and invest the proceeds in the establishment or expansion of industries in the areas referred to in paragraphs (ii) and (iii) of article 5;

(viii) industrial enterprises whose expansion would be of particular value to the country because of their contribution to national or regional development, the provision of employment and the more efficient integration of industry.

REQUIREMENTS

Article 22. To enjoy the benefits provided, enterprises shall meet the following requirements:

(i) They must possess a capital structure in which Mexican participation is at least 51 per cent.

(ii) Their payments abroad for acquiring or being entitled to use patents, trade marks, trade names or technical assistance, whether in the form of royalties, a share of production, sales or profits or otherwise and whether in kind, securities, credit or cash, shall be limited to such proportion of their net annual sales as is determined by the Commission which may in no circumstances exceed 3 per cent.

(iii) Their applications must be accompanied by any agreements which concern the matters referred to in the preceding paragraph.

The incentives referred to in the present Decree shall not be granted where those agreements establish export restrictions contrary to the national interest.

(iv) Any credit which they have obtained abroad and the interest payable on it shall be limited to the amounts approved by the Commission.

(v) They shall observe the official quality standards established by the Department of Industry and Trade or, where no such standards exist, any standards prescribed in the relevant decision.

(vi) The minimum domestic content of their direct production costs shall be 60 per cent. The Inter-Departmental Commission may agree to the grant of the benefits provided for in the present Decree where the enterprise concerned begins operations at a lower percentage on condition that it complies with a scheme approved by the Commission for raising the percentage to the above figure. Enterprises requiring raw materials not available in Mexico may be exempted from the obligation to operate on the 60 per cent basis.

In calculating whether that obligation is met the Inter-Departmental Commission may take into consideration the domestic content of exported goods in cases where the figure of 60 per cent is not achieved. This treatment shall not be accorded to cosmetics manufacturers.

(vii) The management and administration of the enterprise must be in the hands of Mexicans. Where the enterprise has a board of directors, the majority of the board must be Mexican.

If use is made of foreigners' technical services, the enterprise shall indicate the manner in which it will comply with the provisions of the Federal Labour Act concerning the training of Mexican workers.

(viii) Enterprises covered by paragraphs (iii) and (iv) of article 1 shall observe whatever requirements the Department of Industry and Trade may prescribe with regard to the difference between their prices and the prices prevailing on the domestic markets of the principal supplier countries.

ANDEAN GROUP

DECISION NO.24 OF THE COMMISSION OF THE CARTAGENA AGREEMENT

COMMON REGIME FOR THE TREATMENT OF FOREIGN CAPITAL AND FOR TRADE MARKS, PATENTS, LICENCES AND ROYALTIES

Chapter I

Article 1. For the purposes of the present régime the following definitions shall apply:

Direct foreign investment: contributions to the capital of an enterprise which come from abroad, are owned by foreign natural persons or foreign enterprises and are made in freely convertible currencies, industrial plant, machinery or equipment, and which carry the right to the re-export of their value and the transfer of profits to places abroad.

Investments in domestic currency originating from resources entitled to be remitted to places abroad shall likewise be regarded as direct foreign investment.

Foreign investor: the owner of a direct foreign investment.

Domestic investor: the State, domestic natural persons, domestic non-profit-making artificial persons and, as defined in the present article, domestic enterprises. Foreign natural persons who have resided in the recipient country for not less than one year uninterruptedly and who declare to the competent national authority that they waive the right to re-export capital and to remit profits abroad shall likewise be regarded as domestic investors.

Domestic enterprise: an enterprise which is established in the recipient country and in which over 80 per cent of the capital is owned by domestic investors, provided that in the opinion of the competent national authority such proportion is reflected in the technical, financial, administrative and commercial management of the enterprise.

Mixed enterprise: an enterprise which is established in the recipient country and in which between 51 and 80 per cent of the capital is owned by domestic investors, provided that in the opinion of the competent national authority such proportion is reflected in the technical, financial, administrative and commercial management of the enterprise.

Foreign enterprise: an enterprise in which less than 51 per cent of the capital is owned by domestic investors or one in which a higher proportion is so owned but in the opinion of the competent national authority is not reflected in the technical, financial, administrative and commercial management of the enterprise.

New investment: an investment made after 1 January 1971 in new or existing enterprises.

Reinvestment: an investment where all or some of the non-distributed profits generated by a direct foreign investment are invested in the enterprise which generated them.

Recipient country: the country in which a direct foreign investment is made.

Commission: the Commission of the Cartagena Agreement.

Board: the Board of the Cartagena Agreement.

Member country: any country party to the Cartagena Agreement.

Article 2. Any foreign investor desiring to invest in a member country shall submit an application to the competent national authority, which shall assess the application and subsequently authorize the investment if it meets the development priorities of the receiving country. The application shall conform to the model given in annex 1 to the present régime.

The Commission, on a proposal from the Board, may approve common criteria for the assessment of direct foreign investment in member countries.

Article 3. Member countries shall not permit direct foreign investment in activities which they consider to be satisfactorily performed by existing enterprises.

Likewise they shall not permit direct foreign investment in shares, capital interests or other rights of ownership belonging to domestic investors.

Direct investment in a domestic enterprise for the purpose of preventing its bankruptcy, where that is imminent, shall be exempt from the prohibition expressed in the foregoing paragraph provided that:

(a) the supervisory authority for joint stock companies in the country concerned or the equivalent of that authority vouches for the imminence of the bankruptcy;

(b) the enterprise shows that it has granted a preferential right of purchase to domestic or subregional investors;

(c) the foreign investor undertakes that the shares, capital interests or other rights which he acquires in the enterprise will be offered for sale to domestic investors to a sufficient extent to make the enterprise a domestic enterprise within a given period, which shall not exceed 15 years and shall be prescribed for each case according to the characteristics of the sector concerned.

The authorization granted by the competent national authority shall stipulate the period and conditions for the discharge of the above obligation, the manner in which the value of the shares, capital interests or other rights shall be determined at the time of their sale and, where appropriate, the arrangements for guaranteeing their transfer to domestic investors.

Article 4. Foreign investors may be authorized to participate in domestic or mixed enterprises provided that this serves to increase the capital of the enterprise concerned and does not alter the domestic or mixed status of the enterprise.

Article 5. Every direct foreign investment, together with the agreement stipulating the terms of the authorization, shall be registered with the competent national authority. The amount of the investment shall be registered in freely convertible currency.

Article 6. The authority which registers the investment, in conjunction with whatever departments or offices of State are competent in each particular case, shall be responsible for supervising the performance of the obligations assumed by foreign investors.

In addition to the functions prescribed in other provisions of the present régime and in the corresponding regulations, the competent national authority shall:

(a) supervise the discharge of obligations concerning domestic participation in the technical, administrative, financial and commercial management of the enterprise and in its capital;

(b) authorize the purchase by foreign investors of shares, capital interests or other rights in domestic or mixed enterprises in accordance with the provisions of articles 3 and 4 of the present régime in special cases;

(c) establish an information and control system in respect of the prices of intermediate products provided by suppliers of foreign technology or foreign capital;

(d) authorize the transfer to places abroad in freely convertible foreign exchange of any sum which enterprises or investors are entitled to remit under the present régime and the legislation of the country concerned;

(e) centralize records maintained for statistical, book-keeping, information and control purposes in connexion with direct foreign investments; and

(f) authorize licence agreements for the use of imported technology and the exploitation of trade marks and patents.

Article 7. A foreign investor shall be entitled to re-export invested capital where he sells his shares, capital interests or other rights to domestic investors or where the enterprise is wound up.

The sale of shares, capital interests or other rights owned by a foreign investor to another foreign investor shall require prior authorization from the competent national authority and shall not be considered as a re-export of capital.

Article 8. "Re-exportable capital" means the amount of direct foreign investment initially recorded and actually invested plus any reinvestments made in the same enterprise in accordance with the provisions of the present régime and less net losses, if any.

Where domestic investors participate, the foregoing provision shall be limited in its application to the percentage of foreign investment involved in reinvestments and net losses.

Article 9. If the enterprise is wound up, any difference which may appear between the real value of the net assets and the re-exportable capital as defined in the previous article shall be considered a capital gain and may be remitted to places abroad after payment of the relevant taxes.

Article 10. A foreign investor shall be entitled to transfer to places abroad any sum he obtains from the sale of his shares, capital interests or other rights after payment of the relevant taxes.

Article 11. Any sums which a foreign investor is entitled to remit to places abroad shall be converted at the rate of exchange applicable at the time the remittance is made.

Article 12. The reinvestment of profits which are earned by foreign enterprises shall be considered as new investment and may not be made without prior authorization and registration.

Article 13. Governments of member countries may permit the profits earned by a foreign enterprise to be reinvested without specific authorization up to an annual maximum of 5 per cent of the capital of the enterprise concerned. In these circumstances the obligation to register shall remain.

Article 14. Foreign credit obtained by an enterprise shall require the prior permission of the competent authority and shall be registered with that authority.

Global limits of foreign indebtedness may be authorized for specific periods. Credit agreements entered into within these limits shall be registered with the competent authorities.

Article 15. Governments of member countries shall refrain from giving any form of guarantee, either directly or through official or semi-official institutions, for foreign credit transactions entered into by foriegn enterprises in which the State does not participate.

Article 16. Transfers made by enterprises to places abroad by way of capital repayments and interest connected with the use of foreign credit shall be authorized in the terms of the agreement as registered.

In respect of foreign credit agreements concluded between a parent company and subsidiaries or between subsidiaries of any one foreign enterprise, the effective annual rate of interest shall not be more than three percentage points higher than the rate of interest for first-class securities on the financial market of the country of origin of the currency in which the transaction has been registered. In respect of foreign credit agreements other than those referred to above, the effective annual rate of interest paid by enterprises shall be determined by the competent national authority and shall be strictly related to the conditions prevailing on the financial market of the country in which the transaction has been registered.

For the purposes of the present article, effective interest means the total cost of the debtor for the use of the credit, including commission and charges of any kind.

Article 17. As regards domestic credit, foreign enterprises shall have access to short-term credit only, on the terms and conditions prescribed in regulations which the Commission, on a proposal from the Board, shall prescribe in this respect.

Chapter II

Article 27. Only the products produced by domestic enterprises or mixed enterprises of member countries, or by foreign enterprises which are in the process of conversion into domestic enterprises or mixed enterprises as provided for in the present chapter, may enjoy the benefits arising under the liberalization programme of the Cartagena Agreement.

Article 28. Foreign enterprises at present in existence in the territory of any member country and wishing to enjoy the benefits arising under the liberalization programme of the Cartagena Agreement in respect of their products shall agree with the competent authority of the recipient country, within the three years following the date on which the present régime enters into force, on their gradual and progressive conversion into domestic enterprises or mixed enterprises as provided for in article 31.

In every case the proportion of the capital of the enterprise held by domestic investors at the end of the above three-year period shall not be less than 15 per cent.

The period within which the conversion shall take place may not exceed 15 years in Colombia, Chile and Peru, and 20 years in Bolivia and Ecuador, reckoned from the date on which the present instrument enters into force.

By the time two-thirds of the period agreed for the conversion has elapsed, the proportion of the capital of these enterprises held by domestic investors shall not be less than 45 per cent.

"Foreign enterprises at present in existence" shall mean foreign enterprises legally established in their respective countries on 30 June 1971.

Article 29. The national authorities responsible for the issue of certificates of origin for goods shall grant such certificates in respect of products manufactured by foreign enterprises at present in existence which, within the three-year period referred to in the first paragraph of article 28, formally declare to the Government of the recipient country their intention to convert themselves into domestic enterprises or mixed enterprises.

The products of foreign enterprises at present in existence which do not enter into an agreement to convert themselves into domestic or mixed enterprises within the above-mentioned three-year period may not enjoy the benefits arising under the liberalization programme of the Agreement and shall therefore not be issued certificates of origin by the competent authority.

Article 30. Foreign enterprises established in the territory of any member country from 1 July 1971 onwards shall undertake, on behalf of their investors, to place on sale gradually and progressively, as provided in article 31, such percentage of its shares, capital interests or other rights as may be required for the said enterprises to be converted into mixed enterprises within a period not exceeding 15 years in the case of Colombia, Chile and Peru and 20 years in the case of Bolivia and Ecuador.

In the case of Colombia, Chile and Peru, the relevant agreement shall stipulate that the share of domestic investors in the capital of the enterprise shall not be less than 15 per cent at the start of production, not less than 30 per cent when one-third of the agreed period has elapsed and not less than 45 per cent when two-thirds of this period have elapsed.

In the case of Bolivia and Ecuador, the progressive participation of domestic investors in the capital of the enterprise shall be not less than 5 per cent three years after the start of production, not less than 10 per cent when one-third of the agreed period has elapsed and not less than 35 per cent when two-thirds of this period have elapsed.

In calculating the percentage referred to in this article any interest of subregional investors or of the Andean Development Corporation in the capital shall be reckoned as the interest of domestic investors.

In any event, the 20-year period in the cases of Bolivia and Ecuador shall be reckoned as commencing two years after the start of production.

Article 31. Agreements on the conversion of foreign enterprises into mixed enterprises shall cover, inter alia, the following:

(a) the period within which the obligation to convert the foreign enterprise into a mixed enterprise shall be fulfilled;

(b) the timetable for the transfer of the shares, capital interests or other rights to domestic investors, including, at least, the rules regarding minimum percentages referred to in articles 28 and 30;

(c) rules which will ensure the progressive participation of domestic investors or their representatives in the technical, financial, commercial and administrative management of the enterprise, at least from the date on which the latter starts production;

(d) the manner in which the value of the shares, capital interests or other rights shall be determined at the time of their sale; and

(e) the procedures for ensuring the transfer of the shares, capital interests or other rights to domestic investors.

Article 32. The products of a foreign enterprise shall enjoy the benefits arising under the liberalization programme of the Cartagena Agreement during the period agreed upon for its conversion into a mixed enterprise, in the manner specified in the relevant agreement. If the foreign enterprise fails to fulfil the obligations specified in the relevant agreement or if, by the end of the agreed period, it has not been converted into a mixed enterprise, its products shall no longer enjoy the benefits of the above-mentioned liberalization programme and certificates of origin may therefore not be issued in respect of them.

Article 33. Among the matters covered by the present régime, the rights for foreign and mixed enterprises to which the régime refers shall be the maximum rights which may be granted to them by the member countries.

Article 34. Foreign enterprises 80 per cent or more of whose production is destined for export to markets of third countries shall not be required to comply with the rules laid down in this chapter. In this case, the products of the enterprises in question may not enjoy any of the benefits arising under the liberalization programme of the Cartagena Agreement.

Article 35. Fulfilment by foreign enterprises of the obligation to place on sale specific percentages of the shares, capital interests or other rights referred to in articles 3, 28 and 30 shall be supervised by the competent national authority having responsibility for the sector concerned.

This obligation shall be deemed fulfilled by sale to private individuals, the State or State enterprises of the recipient country.

Article 36. Enterprises in which the State or State enterprises participate shall be deemed mixed enterprises even if the participation amounts to less than 51 per cent of the capital, provided that the State representation exercises effective control over the decisions of the enterprise. The Commission, upon the proposal of the Board, shall, within three months following the entry into force of the present régime, fix the minimum percentage participation by the State or by State enterprises to which this article refers.

Article 37. Foreign investors shall have the right, subject to the prior authorization of the competent national authority, to transfer abroad, in freely convertible currency, the certified net profits derived from the direct foreign investment, up to a maximum of 14 per cent of that investment annually.

In special cases, the Commission may, at the request of any member country, authorize percentages exceeding that fixed in this article.

Chapter III

SPECIAL RULES FOR SECTORS

Article 38. Each member country may reserve particular sectors of economic activity for domestic enterprises, whether public or private, and may decide whether mixed enterprises shall be allowed to participate in these sectors.

Subject to the provisions of other articles of this chapter, the Commission, on the proposal of the Board, may determine the sectors which all the member countries shall reserve for domestic enterprises, whether public or private, and may decide whether the participation of mixed enterprises in these sectors shall be allowed.

Article 39. Foreign enterprises operating in the sectors referred to in this chapter shall not be obliged to comply with the provisions of the preceding chapter concerning conversion of foreign enterprises into domestic or mixed enterprises. They shall, however, be required to comply with the other provisions of the common régime and with the special provisions set out in articles 40 to 43, inclusive.

Article 40. During the first ten years of application of the present régime, foreign enterprises may be authorized to engage in activities in the primary commodities sector under the concessions system, provided that the term of the relevant contract does not exceed 20 years.

For the purposes of the present régime, the primary commodities sector shall be understood to mean the sector which includes the primary activities of prospecting for and development of all types of minerals, including liquid and gaseous hydrocarbons, gas pipelines, oil pipelines and forestry operations.

The member countries shall not authorize depletion allowances for tax purposes for enterprises investing in this sector.

The participation of foreign enterprises in the prospecting for and development of liquid and gaseous hydrocarbon deposits shall preferably be authorized in the form of an association agreement with State enterprises of the recipient State.

The member countries may grant to foreign enterprises established in this sector treatment other than that provided for in article 37.

Article 41. No foreign enterprise may be established nor may any new direct foreign investment be made in the public utilities sector. Investments which foreign enterprises at present in existence have to make in order to operate in a technically and economically efficient manner shall be exempt from this rule.

For these purposes, public utilities shall be understood to mean services providing drinking water, drainage, electric power and public lighting, sanitation and health services and telephone, mail and telecommunications service.

Article 42. No new direct foreign investment in the insurance, commercial banking or other financial institutions sector shall be allowed.

The foreign banks at present in existence in the territory of the member countries shall, within a period of three years reckoned from the entry into force of the present régime, cease to accept local current account, savings account and time deposits.

Foreign banks at present in existence which wish to continue receiving local deposits of any kind must convert themselves into domestic enterprises, for which purpose they shall, within the period specified in the preceding paragraph, offer for sale to domestic investors shares amounting to at least 80 per cent of their capital.

Article 43. No new direct foreign investment shall be allowed in domestic transport, advertising, commercial radio broadcasting, television stations, magazines or other periodicals or in enterprises engaged in domestic marketing of products of any kind.

Foreign enterprises at present operating in these sectors shall convert themselves into domestic enterprises, for which purpose they shall, within a period not exceeding three years reckoned from the entry into force of the present régime, offer for sale to domestic investors at least 80 per cent of their shares.

Article 44. When, in the opinion of the recipient country, special circumstances exist, that country may apply rules other than those specified in articles 40 to 43 inclusive.

The products of foreign enterprises operating in the sectors referred to in this chapter which do not agree to convert themselves into domestic or mixed enterprises or in respect of which the member countries apply the different rules referred to in the preceding paragraph may not enjoy the benefits of the liberalization programme of the Cartagena Agreement.

Chapter IV

Article 45. The capital of joint stock companies shall consist of registered shares.

Presently existing bearer shares shall be converted into registered shares within a period of one year reckoned from the entry into force of the present régime.

Article 46. In the case of projects involving products reserved for Bolivia or Ecuador under article 50 of the Cartagena Agreement, the four other countries undertake not to allow direct foreign investment in their territory, except as provided for in agreements concluded prior to 31 December 1970.

Article 47. The Commission, on the proposal of the Board, shall, not later than 30 November 1971, adopt an agreement for the avoidance of double taxation among the member countries.

Within the same period, the Commission, on the proposal of the Board, shall adopt a standard form of agreement for the conclusion of double taxation arrangements between member countries and States outside the subregion. The member countries shall, in the interim, refrain from concluding arrangements of this kind with any country outside the subregion.

Article 48. The member countries undertake to keep one another informed and to inform the Board concerning the application of the present régime within their territory and particularly concerning the rules in chapter II. They also undertake to establish a permanent system for the exchange of information concerning any authorizations for foreign investment or the import of technology which they grant in their territory, in order to facilitate greater harmonization of their policies and increase their bargaining power for the purpose of securing for the recipient country terms no less favourable than those negotiated in similar cases with any other member country. They also undertake to co-ordinate their action closely in international bodies and forums which consider matters related to foreign investment or the transfer of technology.

Article 49. Subject to the provisions of articles 79, 81 and 99 of the Cartagena Agreement, any member country which considers itself harmed by imports of products by foreign enterprises under the liberalization programme of the said Agreement, may apply to the Board for permission to take the necessary corrective measures in order to avoid such harm.

Article 50. The member countries shall not grant to foreign investors any treatment more favourable than that which they grant to domestic investors.

Article 51. Clauses removing possible conflicts or disputes from the national jurisdiction and competence of the recipient country or which permit the subrogation by States of the rights of shares of their domestic investors shall not be allowed in any instrument relating to investment or the transfer of technology.

Any dispute between the member countries under the present régime concerning its interpretation or application shall be resolved in accordance with the procedure laid down in chapter II, section D, "Settlement of disputes", of the Cartagena Agreement.

VI

EXTRACTS FROM LAWS AND REGULATIONS AIMED AT CONTROLLING RESTRICTIVE BUSINESS PRACTICES EMBODIED IN INTERNATIONAL LICENSING AGREEMENTS

(i) Argentina
(ii) Brazil
(iii) Mexico
(iv) Andean Group

ARGENTINA

LAW NO. 19,231 OF 13 SEPTEMBER 1971

Article 1. The National Registry of Licence Agreements and Agreements for Transfer of Technology is hereby established within the sphere of responsibility of the Ministry of Industry, Commerce and Mining.

Article 2. All acts capable of taking effect in Argentine territory shall be recorded in the Registry established under article 1 if they are acts under which persons or entities domiciled in Argentina within the meaning of article 89 and paragraph 4 of article 90 of the Civil Code are liable to make payment or render a consideration of any other kind to persons resident abroad or foreign entities in respect of:

(a) Licensing the use of trade marks.

(b) Licensing the use of patents of invention.

(c) Licensing the use of industrial designs or models where these are capable of valuation.

(d) Furnishing technical know-how in the form of drawings, diagrams, models, instructions, formulations, specifications and the preparation and training of personnel and in other ways.

(e) The provision of detailed engineering for the construction of installations or the manufacture of products.

(f) Technical advice, whether supplied occasionally, periodically or permanently.

Article 3. The supervisory authority in charge of the National Registry of Licence Agreements and Agreements for Transfer of Technology shall consider in the light of article 2 the conditions and liabilities set forth in acts submitted for registration and may refuse registration in the following instances:

(a) Where the object of the act concerns the use on an Argentine product of a foreign trade mark or Argentine trade mark registered in the name of a person resident abroad or a foreign entity and where no technological innovation or contribution is provided.

(b) Where the object of the act involves the import of technology of a standard which can be shown to be attainable in Argentina.

(c) Where the pecuniary or other consideration is disproportionate to the licence which is granted or the technology which is transferred.

(d) Where the rights which are granted permit the direct or indirect control or manipulation of the country's production, distribution, marketing, investment, research or technological development.

(e) Where an obligation is created to acquire equipment or raw materials from a particular source outside Argentina.

(f) Where the export or sale for export of Argentine products is forbidden or where the right to sell is made subject to permission from abroad or any limit or control whatsoever is placed on exports.

(g) Where assignment is required, whether for consideration or not, of any patents, trade marks, innovations or improvements obtained in Argentina in connexion with the licence which is granted or the technology which is transferred.

(h) Where prices are stipulated for the sale or resale of goods produced in Argentina.

(i) Where the hearing and decision of any case which may arise with regard to the interpretation or performance of the act is made subject to the jurisdiction of foreign courts. These cases shall be brought before the competent Argentine courts.

Article 4. The Executive may, for particular sectors, activities or goods, prescribe a maximum percentage for payments required to be made or other considerations required to be rendered by recipients of technology under acts specified in article 2. This maximum percentage shall be determined in the light of the nature of the goods and the net profits they may generate, the circumstances prevailing in the sector or activity concerned, the demands of economic development and the national interest.

Article 5. Where any acts specified in article 2 and any amendments to such acts or extensions thereof are not recorded in the National Registry of Licence Agreements and Agreements for Transfer of Technology pursuant to the provisions of the present Law and the regulations to it, or where their registration has lapsed or been cancelled, they shall be legally invalid and application for their enforcement may not be made to the Argentine courts.

Article 6. Acts specified in article 2 shall be legally valid and take effect from the date on which they are concluded, provided they are recorded in the National Registry of Licence Agreements and Agreements for Transfer of Technology within the sixty (60) days following that date. Once this period has expired they shall not be legally valid and take effect until the date on which they are recorded.

Article 7. Any acts specified in article 2 which are concluded before the entry into force of the present Law shall be legally valid and take effect from the date on which they are concluded, provided they are recorded in the National Registry of Licence Agreements and Agreements for Transfer of Technology before 1 January 1972. These acts shall be recorded as a matter of course, but they must conform to the provisions of article 3 before 1 January 1974 and do so in accordance with such requirements as may be prescribed by the supervisory authority mentioned above; if not, their registration shall automatically expire on that date without prejudice to the rights of third parties affected thereby to bring an action for damages against the person whose omission caused the loss of legal protection.

Article 8. Any acts specified in article 2 which are concluded before the entry into force of the present Law but are not recorded in the National Registry of Licence Agreements and Agreements for Transfer of Technology before 1 January 1972 shall not be registered as a matter of course as provided in article 6 (sic) and shall be subject to the requirements of article 3.

Article 9. Where an act specified in article 2 is recorded in the National Registry of Licence Agreements and Agreements for Transfer of Technology, its registration shall lapse automatically if within the two (2) years following the date of its registration the performance of the act has not commenced or the act has not produced any effects in Argentina. In duly substantiated cases the supervisory authority for the National Registry of Licence Agreements and Agreements for Transfer of Technology may permit the act in question to be registered afresh, provided this is requested before the expiry of the period provided for in the present article and the situation referred to in article 3 (b) has not arisen.

Article 10. Pecuniary or other considerations relating to acts specified in article 2 shall bear solely on the net profits generated by the licensed goods or services. Any pecuniary or other consideration which takes the form of an investment consisting of the payment of a predetermined lump sum shall be exempt from the foregoing provision. The Executive may authorize exceptions to the provisions of the present article in respect of those sectors or products for which Argentina needs specific technological contributions as established in assessments and studies of the subject undertaken by the technical bodies referred to in article 17.

Article 11. Any acts specified in article 2 which give rise to an investment consisting of the payment of a predetermined lump sum shall be exempt from stamp duty.

With the advice of the supervisory authority the National Development Bank may establish special lines of credit to help enterprises classifiable as local domestic-capital enterprises under Law No. 18875 and the regulations thereto to obtain imported technology by acquiring it as an investment consisting of the payment of a predetermined lump sum.

Article 12. The Central Bank of the Argentine Republic shall not authorize external payments or remittances to places abroad in respect of acts specified in article 2 unless the acts are recorded in the Register established under article 1. It shall issue rules to this effect with due regard to article 4.

Article 13. The National Registry of Licence Agreements and Agreements for Transfer of Technology shall issue a formal certificate of approval and registration of the act; this certificate will entitle its owner to treat any costs and expenditure which he may incur in connexion with the recording of the act as serving to earn, maintain or preserve taxable income derived from his particular activity.

Article 14. For the purpose of their entry in the Registry, the acts specified in article 2 shall be in writing and in the Spanish language, except as regards technical terms which have no equivalent in Spanish.

Article 15. The information to be furnished to the National Registry of Licence Agreements and Agreements for Transfer of Technology shall be prescribed by the Executive. The information shall be sufficient for the precise definition and determination of the purpose or subject matter of the act, the scope, degree and other aspects of the stipulated rights and obligations, the pecuniary and any other consideration involved, the duration of the agreement and any other relevant circumstances. The National Registry of Licence Agreements and Agreements for Transfer of Technology shall compile statistics concerning the acts which it records and any amendments to them and shall determine the total amounts of royalties and external payments which they involve.

Article 16. The regulations to the present Law shall provide for due publicity being given to acts which are to be recorded in the National Registry of Licence Agreements and Agreements for Transfer of Technology and shall confer the right to oppose the registration of an act on any person showing a legitimate interest in doing so.

Article 17. The supervisory authority for the National Registry of Licence Agreements and Agreements for Transfer of Technology shall be the Ministry of Industry, Commerce and Mining, within whose sphere of responsibility the necessary technical bodies shall be appointed to undertake the studies and appraisals required under article 3 and regulations shall be laid down for their operation and mode of conduct.

Article 18. The supervisory authority in charge of the National Registry of Licence Agreements and Agreements for Transfer of Technology is hereby authorized to furnish advice through the technical bodies provided for in article 17 to those interested parties who may seek guidance concerning the negotiation and conclusion of the acts referred to in article 2 of the present Law. The conditions under which this advice may be given shall be prescribed in the regulations to the present Law.

Article 19. The supervisory authority may impose the following penalties on persons who wilfully contravene the provisions of the present Law;

(a) The cancellation of the registration of the act in the National Registry of Licence Agreements and Agreements for Transfer of Technology.

(b) Fines of up to one million (1,000,000) pesos.

(c) The special disqualification of the offender from engaging in trade or industry for a period of up to two (2) years.

(d) The loss of legal personality where non-mercantile or mercantile companies are concerned.

Article 20. Decisions granting or refusing permission for acts specified in article 2, or any amendments to or extensions of those acts to be registered in the National Registry of Licence Agreements and Agreements for Transfer of Technology shall be issued by the supervisory authority within the ninety (90) days following the submission of the corresponding application. If no decision has been issued upon the expiry of that period the interested party shall ask for the proceedings to be expedited, and if a further ten (10) days elapses without result the application shall be deemed to have been approved and the act in question shall be recorded in the Registry in the form in which it was submitted.

Article 21. Appeal shall lie to the Federal Chamber of Appeals against decisions whereby the registration of any act specified in article 2 or any amendment to or extension of any such act is granted, refused, cancelled or declared lapsed, and against decisions imposing the penalties prescribed in article 19. Appeals shall be lodged within the ten (10) working days following the date on which the interested party is notified of the decision at the domicile elected by him in his application for registration. Where fines are involved, an appeal may not be entered until the fines have been paid.

Article 22. The Ministry of Industry, Commerce and Mining, as supervisory authority for the National Registry of Licence Agreements and Agreements for Transfer of Technology and as the body responsible for the implementation of the present Law, shall within sixty (60) days submit a draft of the regulations to the Law and proposals on the framework and organization of the Registry and the technical bodies referred to in article 17. The Executive shall appropriate the funds required in connexion with the present Law.

Article 23. Where an investment of foreign capital in the form of intangible assets as provided for in article 2(e) of Law No. 19,151 takes the form of a contribution or transfer of technology, the contribution or transfer in question shall comply with the requirements of the present Law.

BRAZIL

CODE OF INDUSTRIAL PROPERTY (LAW No. 5,772 OF 1971)

Patents

29. The grant of exploitation licences shall be effected under an instrument in due legal form setting out the terms relating to remuneration and to the exploitation of the patent. The instrument shall specify the number and title of the application or the patent.

(1) The remuneration shall be fixed in accordance with the legislation in force and with instructions issued by the authorities responsible for finance and exchange.

(2) The licence may not impose any restrictions on the marketing or exportation of the product covered by it, nor on the importation of articles or material necessary for the manufacture of the product.

(3) In accordance with the conditions and purposes of this Code, all rights to improvements made by the licensee to the product or process shall belong to him.

30. Both the acquisition of a patent and the grant of a licence shall be subject to registration by the National Institute of Industrial Property.

Sole paragraph. Registration shall have no effect so far as royalties are concerned when it relates to:

(a) a patent granted outside Brazil;

(b) a patent whose owner is resident, domiciled or established abroad and which does not have the priority provided for in Section 17 of this Code;

(c) a patent that has expired or that is in the process of annulment or revocation;

(d) a patent whose previous owner had no right to such royalties.

Marks

90. Owners of marks or publicity slogans or signs may authorize their use by duly specified third parties, under an exploitation contract which shall mention the number of the application or registration and the terms of remuneration as well as the owner's obligation to exercise effective control over the description, nature and quality of the articles or services concerned.

(1) The remuneration shall be fixed in accordance with the legislation in force and with instructions issued by the authorities responsible for finance and exchange.

(2) The exploitation contract may not impose any restrictions on industrialization or marketing, including export.

(3) The exploitation contract, and its renewals or extensions, shall be binding on third parties only after it has been approved and recorded by the National Institute of Industrial Property.

(4) Recording shall have no effect so far as the payment of royalties is concerned where it relates to:

(a) a registration granted outside Brazil;

(b) a registration whose owner is resident or established abroad and which does not have the priority provided for in section 68;

(c) a registration that has expired or that is in the process of annulment or cancellation;

(d) a registration in force by virtue of renewal;

(e) a registration whose previous owner had no right to such royalties.

91. A decision denying recording may be appealed within 60 days.

BRAZIL

LAW NO. 4,131 OF 1962 ON FOREIGN CAPITAL

Article 10

The Directorate of Currency and Credit (SUMOC) may, when it deems it necessary to do so, investigate technical administrative or similar assistance granted to enterprises established in Brazil and entailing the transfer of foreign exchange abroad, in order to establish whether such assistance is in fact supplied.

Article 11

Applications for the registration of contracts, in connexion with financial transfers in payment of royalties for the use of patents, industrial or commercial, trade marks or other items of the same kind shall be accompanied by a certificate proving the existence and continued validity in Brazil of the privileges granted in the case in question by the National Department of Industrial Property, and by a valid document proving that they have not lapsed in the country of origin.

Article 12

For the purposes of article 37 of Decree No. 47373, of 7 December 1959, the total amount payable as royalties for the use of patents or of industrial or commercial trade marks, and for technical, scientific, administrative or similar assistance may be deducted in tax returns up to a maximum of 5 per cent of the gross earnings from the product manufactured or sold.

1. The Minister of Finance shall establish and periodically review the percentage figures admissible for the deductions referred to in this article, having regard to the types of production or activity, classified by groups according to the degree of importance.

2. The deductions referred to in this article shall be admissible on the production of evidence of the cost of technical, scientific, administrative or similar assistance, provided such services have actually been supplied, or of a contract or licence for the use of trade marks and patents, duly registered in Brazil in accordance with the provisions of the Industrial Property Code.

3. The cost of technical, scientific, administrative or similar assistance may be deducted only during the first five years of operation of the enterprise or followin the introduction of the special manufacturing process, provided the need therefor is demonstrated. This period may be extended for five more years, where this is authorized by the SUMOC Board.

Article 13

When the sums payable as royalties for the use of patents and for technical, scientific, administrative or similar assistance fail to comply with these requirements or are in excess of the maximum established in the preceding article, they shall be regarded as distributed profits, and shall be subject to tax, as provided in articles 43 and 44.

Sole paragraph. The total amount payable to natural or artificial persons, either resident or having their headquarters abroad, for the use of industrial or commercial trade marks shall also be subject to tax, as provided in articles 43 and 44.

Article 14

The remittance of sums representing payments of royalties for the use of patents or of industrial or commercial trade marks shall not be permitted as between a branch or subsidiary established in Brazil and its parent company abroad, or when the major part of the capital of the enterprise established in Brazil belongs to the recipients of the royalties abroad.

Sole paragraph. The deduction provided for in article 12 shall not be permitted in cases covered by this article.

BRAZIL

MINISTRY OF FINANCE

ORDER NO. 436 OF 30 DECEMBER 1958

The Minister of State for Finance, by virtue of the legal authority vested in him and having regard to the provisions of Law No. 3,470, article 74, paragraphs 1 and 2, dated 28 November 1958, concerning the deduction of royalties for the use of trade marks and patents, the cost of technical, scientific, administrative or similar assistance and of repayments of the value of patents, hereby decides, for the purposes of calculating the real profits of artificial persons:

(a) To fix the following maximum percentages for the above-mentioned deductions, taking into account the degree of importance of the type of production or activity:

I. Royalties for the use of patents, manufacturing processes and methods and for costs of technical, scientific, administrative or similar assistance

Group I: Basic Industries

Product	Percentages
1. Electrical energy	
01. Production and distribution	5
2. Fuels	
01. Petroleum and its derivatives	5
3. Transport	
01. Urban railway transport	5
4. Communications	5
5. Transport equipment	
01. Motor cars, lorries and the like	5
02. Motor car parts	5
03. Tyres and inner tubes	5
6. Fertilizers	5
7. Basic chemicals	5
8. Industrial metallurgy	
01. Iron and steel	5
02. Aluminium	5
9. Electrical equipment	
01. Transformers, dynamos and generators	5
02. Electric motors for industrial use	5
03. Telephone, telegraph and signalling equipment and apparatus	5

Product	Percentages
10. Miscellaneous equipment	
01. Agricultural tractors and combined agricultural machines	5
02. Machinery and parts for roadbuilding	5
03. Machinery and parts for the mining and processing industries	5
11. Shipbuilding	
01. Ships	5
02. Ships' equipment	5
12. Cement	5

Group 2: Processing Industries - Essential Products

Product	Percentages
1. Packaging material	4
2. Foodstuffs	4
3. Chemical products	4
4. Pharmaceutical products	4
5. Woven fabrics, yarn and thread	4
5a. Glass and glassware	4
6. Footwear and the like	3.5
7. Manufactures of metal	3.5
8. Manufactures of cement and asbestos	3.5
9. Electrical equipment	3
10. Machinery and equipment	
01. Machines and equipment for domestic use, not regarded as non-essential	3
02. Office machines and equipment	3
03. Equipment for scientific use	3
11. Manufactures of rubber and plastics	2
12. Toilet articles	
01. Articles for shaving	2
02. Dentifrices	2
03. Soaps, common	2
13. Other processing industries	1

II. Royalties for the use of industrial or commercial trade marks or trade names, whatever the type of production or activity, where use of the trade mark or trade name is not included in the use of the patent, manufacturing process or method: 1 per cent;

(b) The maximum percentages established shall be based on gross operating receipts in the case of holders of public service concessions, or on the amount of gross earnings from the products covered by the licensing agreement or contract for the supply of assistance;

(c) In the case of payments made on the basis of the products manufactured each year, the percentages established as the maximum for the deductions referred to in paragraph (a), I and II, shall apply to the sale value of the products manufactured.

BRAZIL

MINISTRY OF INDUSTRY AND TRADE, INSTITUTE OF INDUSTRIAL PROPERTY

Application form for the registration of contracts for the transfer of technology

INSTRUCTIONS

I. GENERAL

All applications for registration must comply with legal requirements and must be accompanied by the following documents:

1. Two copies of the Application Form for the Registration of Contracts for the Transfer of Technology;

2. In connexion with all documents to be registered, whether contracts, additional clauses or invoices, the following must be submitted:

(a) the original document (or a certified copy thereof); when executed by a Brazilian and a foreign enterprise, this must be accompanied by a power of attorney from the foreign enterprise authorizing the signatory to sign it, and the signature of the persons signing the document must be authenticated by a notary public;

(b) a translation by a sworn public translator; and

(c) copies, certified page by page, of the documents referred to in sub-paragraphs (a) and (b);

3. Proof of payment to the Bank of Brazil;

4. A power of attorney drawn up before the Institute of Industrial Property, when the holder of the power of attorney signs the form mentioned in item 1; and

5. A letter from the licensee giving reasons for concluding the contract and dealing with the following points, in addition to any others which the licensee may deem relevant;

(a) the practical advantages for the enterprise of the technology transferred under the contract;

(b) the advantages of the contract to the Brazilian economy including import substitution;

(c) the non-existence of the technology, or the impossibility of acquiring it, in Brazil;

(d) the period envisaged for learning the technology; and

(e) a description of the technique or process forming the subject of the contract, accompanied by catalogues, where possible.

The following applies only in cases involving the use and/or transfer of patent rights or the use of a trade mark.

(a) Give the number and date of the application for the right and/or patent and/or application for registration of the trade mark and/or registration of the trade mark in Brazil;

(b) The particulars required in sub-paragraphs (c), (d) and (e) need not be given.

6. If the licensee is a public corporation, proof that legal requirements have been complied with, (i.e., in the case of organs of the Federal administration, including those under indirect administration, the requirements of Decree No. 64,345; in the case of organs of the States, Municipalities and the Federal District under direct or indirect administration, the requirements of article 42 (iv) of the Constitution).

II. Instructions concerning the form itself

Some of the questions in the form need not be answered, provided the applicant indicates the serial number of the Institute of Industrial Property file in which the information has already been supplied.

Instructions

Item 1.8 List on a single copy the holders of shares with voting rights, giving the name of the holder, his main office or address and the amount and percentage of his capital holdings. Where the holder is a Brazilian body corporate, the capital holdings must be specified in accordance with the rules indicated below.

Private enterprises are not required to include in the list:

(a) Brazilian individuals with less than 20 per cent of the shares, or

(b) Brazilian bodies corporate holding less than 10 per cent of the shares, if:

(i) they do not account, in all, for more than 40 per cent of the shares and/or

(ii) no foreign individuals or bodies corporate hold any of the shares, either directly or indirectly.

Publicly-owned enterprises, whether under direct or indirect administration, are not required to include in the list:

(a) Brazilian individuals;

(b) Brazilian bodies corporate holding less than 10 per cent of the shares, provided they are private enterprises in which foreign individuals or bodies corporate have no capital holdings, either direct or indirect.

1. Information concerning the licensee

1.1. Name:

1.2. Nationality:

1.3. C.G.C. or C.P.F.

1.4. Full address:

1.5. Branch of activity or registered objective:

1.6. Sector:

1.7. Present capital: ... cruzeiros

Paid up in 19..

1.8. List of shareholders (see "Instructions concerning the form itself")

1.9. Is there a direct or indirect link between the capital of the enterprise granting the licence and the capital of the licensee?

1.9.1. - Direct ( )

1.9.2. - Indirect ( )

1.9.3. - No ( )

1.10. **Earnings in the last financial year:** 19..

1.10.1. Gross total: ... cruzeiros

1.10.2. Net total: ... cruzeiros

(Gross earnings, after deduction of discounts, commissions, refunds, packaging costs, freight and insurance, and sales taxes (tax on distribution of goods (ICM) and tax on industrial products (IPI))

1.11. Do you have other contracts for the transfer of technology? Submit a copy of the record of registration in the Central Bank, or if registration is pending, copies of the applications relating to it, duly certified.

1.12. State payments for technology made under these contracts during the last five years.

Contract No. (Institute of Industrial Property or Central Bank)	Licensor	Year	Total in ... (currency)

1.13. Do you have any contracts for technology which have already expired? Submit a copy of the records in the Central Bank.

1.14. Do you expect to conclude other contracts for technology with the present licensor? State for what purpose.

1.15. Do you have contracts with the licensor that do not relate to transfer of technology? Specify whether they are contracts or agreements covering sales, representation, etc.

1.16. Do you have contracts of a technological nature with enterprises domiciled in Brazil? State whether you are the licensor or the licensee of the technology, and mention the purpose and date of signature of the contract.

1.17. Do you hold shares in enterprises in Brazil? List the enterprises in which you hold 10 per cent or more of the shares and indicate the percentage.

1.18. List transfers abroad made in the past five years, for any reason other than payment for imports. (Enterprises in which more than 25 per cent of the capital is under direct or indirect foreign control are required to answer this question.)

Year	Payee	Country	Reason	Total value

2. Information concerning the licensor

2.1. Name:

2.2. Nationality:

2.3. C.G.C. or C.P.F.

2.4. Full address:

2.5. Branch of activity:

2.6. Date(s) when the licensor began marketing the product(s), manufacturing process(es) or method(s) covered by the contract.

3. Information concerning the contract

3.1. Purpose of the contract

3.2. Nature of the contract

3.2.1. Technical assistance

3.2.1.1. Technical assistance proper (involving a lengthy association that will enable the licensee to learn the technology)

3.2.1.1.1. ( ) Supply of manufacturing processes or methods

3.2.1.1.2. ( ) Supply of technical data and specifications for products

3.2.1.1.3. ( ) Supply of models, patterns or dies

3.2.1.2. Engineering services (involving a temporary association that ends once the service has been rendered)

3.2.1.2.1. ( ) Execution and/or supervision of the assembly, installation and bringing into operation of machinery, equipment or plant

3.2.1.2.2. ( ) Adjustment, inspection, repair or maintenance of machinery and equipment

3.2.1.2.3. ( ) Testing, including quality control

3.2.1.3. Research and projects (involving a temporary association that ends when the research has been completed or the project has been presented)

3.2.1.3.1. ( ) Preparation and/or execution of pilot programmes

3.2.1.3.2. ( ) Laboratory research and experiments

3.2.1.3.3. ( ) Prospecting services

3.2.1.3.4. ( ) Technical planning or programming of manufacturing plant

3.2.1.3.5. ( ) Feasibility and market studies

3.2.1.4. Advisory and consultative services

3.2.1.4.1. ( ) Acting as purchasing agent

3.2.1.4.2. ( ) Representation

3.2.1.4.3. ( ) Management, advisory services or training supplied by experts

3.2.1.5. Rental

3.2.1.5.1. ( ) Of equipment

3.2.1.5.2. ( ) Of patterns or dies

3.2.2. Use of a patent

3.2.2.1. Licence

3.2.2.1.1. ( ) to use manufacturing processes or methods

3.2.2.1.2. ( ) for the manufacture of products

3.2.2.1.3. ( ) to use models, patterns or dies

3.2.2.2. ( ) Transfer of patent rights

3.2.3. Use of a trade mark

3.2.3.1. ( ) Licence

3.2.3.2. ( ) Transfer of a trade mark

3.3. The application for registration is in respect of:

3.3.1. ( ) the original contract

3.3.2. ( ) additional contractual clauses

3.3.3. ( ) the renewal of the contract

3.3.4. ( ) invoice for services rendered

3.4. Dates of the contract

3.4.1. Date of the original contract or invoice

3.4.1.1. Date of signature:
3.4.1.2. Date of entry into force:
3.4.1.3. Date of expiry
3.4.2. Date of the extension or additional clauses
3.4.2.1. Date of signature:
3.4.2.2. Date of entry into force:
3.4.2.3. Date of expiry:

3.5. Territory granted:
3.5.1. For manufacturing
Contractual clause:
3.5.2. For marketing:
Contractual clause:

3.6. Total earnings in the last financial year from the products covered by the contract: 19...
3.6.1. Gross: .... cruzeiros
3.6.2. Net: .... cruzeiros

3.7. Net unit selling price of the products covered by the contract (see item 1.10.2.)

3.8. Have any of the products covered by the contract been exported? If so, specify, by product, the value of exports in the past three years.

3.9. Is the contract connected with a project approved by a government body? If so, submit a copy of the relevant decision.

4. Payments for technology and contractual costs

The term "payments for technology" means any payments under the contract, such as remittances abroad, foreign exchange operations of a purely accounting nature for the conversion of debits arising under the contract into investments, payments in cruzeiros, etc., even when not credited directly to the licensor.

4.1. Currency
4.1.1. Exclusively foreign ( ) Which? ....
4.1.2. Foreign and Brazilian ( ) Which? ....
4.1.3. Exclusively Brazilian ( )

4.2. Method of payment
Payments are made to the licensor:
4.2.1. One a year ( )
4.2.2. Every six months ( )
4.2.3. Every three months ( )
4.2.4. Not at regular intervals ( )

4.3. Payments made to the licensor to date under the contract.

4.3.1. Basis on which payments are calculated (fixed annual prices, percentage of sales, fixed sum per unit produced, etc.)

4.3.2. Payments made:

Payments	Per year	Value in	
		cruzeiros	or .....
A. SINGLE PAYMENT (Fixed price)			
B. PERIODIC			
(i) at fixed prices			
(ii) varying, according to the volume of sales or supply of services			
(iii) varying, according to output			
C. OTHER			

Under "OTHER" supply details and any other information you deem necessary.

4.4. Future payments to the licensor within the proposed period of the contract.

4.4.1. Basis on which the payment is calculated:

4.4.2. Payments to be made (this item must be answered even if the amounts involved are estimates; in that case, state the method used):

Payments	Year	Value in	
		cruzeiros	or ... Prices as at
A. SINGLE PAYMENT (Fixed price)			
B. PERIODIC			
(i) at fixed prices			
(ii) varying, according to the volume of sales or supply of services			
(iii) varying, according to output			
C. OTHER			

4.5. Technological "package" or a single item.

Where the contract specifies payment of a lump sum for technical assistance and the use of a patent and/or trade mark, state the proportion represented by each item in the proposed periodic payments. Where the opposite applies, i.e. when the payment is for a single item, put "100 per cent" against the appropriate item.

4.5.1. Technical assistance:

4.5.2. Patent:

4.5.3. Trade mark:

4.6. Have equipment, raw materials or components been imported or will they need to be imported, for the manufacture of the products covered by the contract?

4.6.1. The imports in question consist of:

4.6.1.1. Equipment ( )

4.6.1.2. Raw materials ( )

4.6.1.3. Components ( )

4.6.2. The imports will be made:

4.6.2.1. From the licensor direct ( )

4.6.2.2. From an enterprise designated by the licensor ( )

4.6.2.3. From other enterprises ( )

4.7. Was any other source considered for the technology forming the subject of the negotiations? Why was preference given to the licensor concerned? (List the sources contacted and give reasons for the preference)

We declare, under penalty of the laws in force, that the information contained in this form for registration of a contract for the transfer of technology is true and assume full responsibility for it.

Place and date:

Signature:

Contact with the enterprise

Give the name of a director or official of the enterprise who is duly authorized to handle any inquiries in connexion with the present application for registration.

Name:

Position:

Address:

Office hours:

Telephone number:

FORM FOR SUPPLEMENTARY INFORMATION REQUIRED

5. Supplementary information required

The supplementary information required below must be supplied even when data for the future have to be estimated. In that case, the applicant must indicate the method used.

5.1. Annual earnings from the products covered by the contract over the past five years.

(Net income means gross income less discounts, commissions, refunds, packaging costs, freight and insurance, sales taxes (ICM and IPI) and, where appropriate, imported components. In the last-mentioned case, state whether or not the imported inputs have been deducted in making the calculation)

Product	Year	Earnings	
		Gross	Net

Have imports been deducted? Yes ( )
No ( )

5.2. Estimates of future earnings from the products covered by the contract during the proposed period of registration.

The estimates have been calculated at 19.. prices

Product	Year	Earnings	
		Gross	Net
	Total		

Have imports been deducted? Yes ( )
No ( )

5.3. Quantity of the products covered by the contract manufactured in the past five years, per year.

Product	Year	Unit	Quantity

5.4. Estimated quantity of the products covered by the contract to be manufactured during the proposed period of registration.

Product	Year	Unit	Quantity

5.5. Payments made to the licensor under the contract over the past five years, distinguishing between the different kinds of payment in each year.

(Differentiate between payments for technical assistance, patents, trade marks, wages, miscellaneous expenditure, etc.)

Payments	Year	Amount	Currency

5.6. Is there an obligation under the contract to incur expenditure on advertising? If so, please estimate the amount expended on advertising, showing the year in which it was or will be incurred, and state whether the services of a designated advertising agency have to be used.

5.7. Is the use of a patent or trade mark necessary in utilizing the technology covered by the contract?

5.7.1. ( ) Patents

(Give registration numbers and periods of validity in Brazil)

5.7.2. ( ) Trade marks

(Give registration numbers and periods of validity in Brazil)

5.8. Goods imported in the past five years for the manufacture of the products covered by the contract.

Year	Value in	
	Raw materials	Components

5.9. Estimated value of imports to be made during the proposed period of registration.

Year	Value in .... at 19.. prices	
	Raw materials	Components

MEXICO

LAW OF 28 DECEMBER 1972 CONCERNING REGISTRATION OF THE TRANSFER OF TECHNOLOGY AND THE USE AND WORKING OF PATENTS, TRADE-NAMES AND TRADE-MARKS

Article 1. A National Register of Technology Transfer, subordinate to the Ministry of Industry and Trade, is established.

Article 2. Registration in the Register referred to in the foregoing article shall be mandatory for documents embodying instruments, contracts or agreements of any kind intended to be operative in the national territory and concluded for the purposes of

(a) the grant of the use of trade-names and trade-marks or of authorization to work them;

(b) the grant of the use of patents of invention, improvements, models and industrial drawings or of authorization to work them;

(c) the furnishing of technical know-how by means of drawings, diagrams, models, guidelines, instructions, formulae, specifications, personnel training and qualification, or by other means;

(d) the supply of basic or detailed engineering know-how for the setting up of plant or equipment or for the manufacture of products, and/or

(e) technical assistance in any form.

Article 3. The following shall be under a duty to apply for the registration of instruments, agreements or contracts as referred to in the foregoing article if they are parties to or beneficiaries under the said instruments, agreements or contracts:

I. individuals or corporate bodies of Mexican nationality;

II. aliens residing in Mexico and corporate bodies of other than Mexican nationality established in the country; and

III. agencies or branches, established in the Republic, of foreign undertakings.

Suppliers of technology who are resident abroad may apply for the registration in the National Register of Technology Transfer of instruments, agreements or contracts to which they are parties.

Article 4. Documents embodying instruments, agreements or contracts as referred to in article 2 shall be produced to the Ministry of Industry and Trade, for registration in the National Register of Technology Transfer, within sixty days after the date on which they are concluded. If the said documents are so produced within the aforesaid time-limit, their registration shall produce its effects from the date on which they were concluded. After that time-limit their registration shall take effect only from the date on which they were so produced.

There shall likewise be produced for registration with the Ministry of Industry and Trade within the time-limit stated in the previous paragraph such amendments as may be made to instruments, agreements or contracts as referred to in article 2. Where the parties terminate such contracts or agreements in advance of the date stipulated in the contracts or agreements, notification to that effect shall be furnished to the Ministry of Industry and Trade within a like time-limit of sixty days after the date of termination.

Article 5. Production of the Registry's certificate of registration shall be required for the purpose of obtaining, where appropriate, the benefits, incentives, aids or facilities for which provision is made in the New and Necessary Industries (Promotion) Act, in other provisions of law, or in regulations which grant them for the establishing or expansion of industrial enterprises or for the establishment of commercial centres in the country's frontier strips and free border zones, or for the purpose of the approval of manufacturing programmes for individuals who or corporate bodies which although under a duty to cause the instruments, agreements or contracts referred to in article 2 hereof, or any amendments to such instruments, agreements or contracts to be registered in the National Register of Technology Transfer have not done so.

Article 6. Instruments, agreements or contracts as referred to in article 2, and amendments to such deeds, agreements or contracts, which have not been registered in the National Register of Technology Transfer shall produce no legal effects and accordingly shall not be assertable before any authority and no action to enforce them shall be receivable by national courts or tribunals.

Instruments as aforesaid shall, if their registration has been cancelled by the Ministry of Industry and Trade, likewise have no legal validity and no action to enforce them shall be receivable by national courts or tribunals.

Article 7. The Ministry of Industry and Trade shall not register instruments, agreements or contracts referred to in article 2 in the following cases:

I. where the purpose thereof is the transfer of technology readily obtainable in the country, provided that the technology is the same;

II. where the price or consideration is disproportionate to the technology acquired or constitutes an unjustified burden on the national economy;

III. where clauses are included which enable the technology supplier directly or indirectly to control or to intervene in the management of the buyer;

IV. where patents, trade-names, trade-marks, innovations or improvements obtained by the technology buyer are required to be transferred, with or without compensation, to the technology supplier;

V. where restrictions are imposed on research or technological development by

VI. where the buyer is required to obtain equipment, tools, parts or raw materials exclusively from a specified source;

VII. where the export of goods or services produced by the buyer is prohibited or restricted in a way contrary to the interests of the country;

VIII. where the use of supplementary technologies is prohibited;

IX. where the goods produced by the technology buyer are required to be sold exclusively to the supplier;

X. where the buyer is required to use on a permanent basis staff specified by the technology supplier;

XI. where production volumes are limited or sale or resale prices are imposed for the buyer's national production or exports;

XII. where the buyer is required to conclude exclusive sale or representation contracts with the technology supplier, in the national territory;

XIII. where the period of validity is too long. The buyer may in no case be bound for more than ten years; and

XIV. where disputes arising from the interruption or execution of the said instruments, agreements or contracts are to be brought before or settled by foreign courts.

Instruments, agreements or contracts referred to in article 2 which are to have effect in the national territory shall be governed by Mexican law.

Article 8. The Ministry of Industry and Trade may register in the National Register of Technology Transfer instruments, agreements or contracts which fail to meet one or more of the requirements set out in the preceding article, where the technology so transferred is of particular benefit to the country. There shall be no derogation from the provisions of paragraphs I, IV, V, VII, and XIV of the preceding article.

Article 9. The instruments, agreements or contracts required to be recorded in the National Register of Technology Transfer shall not include those concerned with:

I. the admission of foreign technicians to install plant and machinery or to carry out repairs;

II. the supply of designs, catalogues or know-how in general acquired with the machinery or equipment and necessary for its installation, provided that no obligation to make subsequent payments is implied;

III. assistance for repairs or in case of emergency, provided that it is furnished under a previously registered instrument, agreement or contract;

TRANSITIONAL PROVISIONS

First. This Act shall take effect 30 days after its publication in the Official Gazette of the Federation.

Second. Instruments, agreements or contracts referred to in article 2 concluded before the entry into effect of this Act shall be brought into conformity with its provisions and registered in the National Registry of Technology Transfer within two years after the date of its entry into effect. The Ministry of Industry and Trade may extend this time-limit where special circumstances so warrant.

The documents containing the said instruments, agreements or contracts shall be submitted to the Ministry of Industry and Trade to enable it to take note of them, without considering their content, within 90 days after the date on which this Act comes into effect.

Third. Where the provisions of the preceding article are complied with within the specified time-limits the persons concerned may continue to enjoy any benefits and incentives referred to in article 5 which they had been granted previously. Otherwise the said benefits or incentives shall be terminated.

Fourth. Until such time as the instruments, agreements or contracts referred to in article 2 have been brought into conformity with the provisions of this Act and registered, the persons concerned shall not be entitled to enjoy the benefits, incentives, aids or facilities referred to in article 5 or to approval of manufacturing programmes.

Fifth. When the time-limits referred to in the second transitional article, with any extensions, have expired, any instruments, agreements or contracts which have not been duly registered in the National Register of Technology Transfer shall cease to produce legal effects within the meaning of article 6.

Sixth. The decision by the Secretary of Industry and Trade as to whether instruments, agreements or contracts concluded before the date of entry into force of this Act shall be registered in the National Register of Technology Transfer, shall be taken within 120 days after the date on which the documents containing them are submitted to it.

ANDEAN GROUP

DECISION NO. 24 OF THE COMMISSION OF THE CARTAGENA AGREEMENT COMMON REGIME FOR THE TREATMENT OF FOREIGN CAPITAL AND FOR TRADE MARKS, PATENTS, LICENCES AND ROYALTIES

Article 6. The authority which registers the investment, in conjunction with whatever departments or offices of State are competent in each particular case, shall be responsible for supervising the performance of the obligations assumed by foreign investors.

In addition to the functions prescribed in other provisions of the present régime and in the corresponding regulations, the competent national authority shall:

(c) establish an information and control system in respect of the prices of intermediate products provided by suppliers of foreign technology or foreign capital;

(f) authorize licence agreements for the use of imported technology and the exploitation of trade marks and patents.

Article 18. Any agreement relating to the import of technology and to patents and trade marks shall be examined and submitted for the approval of the competent authority of the member country concerned, which shall assess the effective contribution of the imported technology by estimating the benefits likely to be obtained from it, the price of the goods in which it is embodied or any other specific and quantifiable effect it may have.

Article 19. Agreements relating to the import of technology shall contain stipulations on at least the following matters:

(a) the particular forms in which the imported technology is to be transferred;

(b) the contractual value of every element involved in the transfer, expressed in terms similar to those used for the registration of direct foreign investment; and

(c) the duration of the agreement.

Article 20. Member countries shall not authorize the conclusion of agreements relating to the transfer of foreign technology or to patents if the agreements contain:

(a) stipulations whereby the provision of technology carries with it the obligation for the recipient country or enterprise to purchase capital goods, intermediate products, raw materials or technology in other forms from a particular source or to make permanent use of staff designated by the enterprise supplying the technology; in exceptional cases the recipient country may accept stipulations of this kind in respect of the purchase of capital goods, intermediate products or raw materials provided that the price of the articles is consonant with current world market prices;

(b) stipulations whereby the enterprise selling the technology reserves the right to fix the sale prices or resale prices of the products manufactured on the basis of the technology in question;

(c) stipulations restricting the volume and structure of production;

(d) stipulations prohibiting the use of competing technologies;

(e) stipulations conferring a total or partial option to purchase on the supplier of the technology;

(f) stipulations requiring the purchaser of the technology to transfer to the supplier any inventions or improvements obtained through the use of the technology;

(g) stipulations requiring the payment of royalties to patentees in respect of unexploited patents; and

(h) other stipulations of equivalent effect.

Save in exceptional cases which are duly classified as such by the competent authority of the recipient country, stipulations prohibiting or limiting in any way the export of products manufactured on the basis of the technology in question shall not be accepted.

In no case shall stipulations of this kind be accepted in respect of subregional trade or the export of similar products to third countries.

Article 21. Subject to prior authorization by the competent national authority, contributions of technology in the form of intangible assets shall confer the right to the payment of royalties but may not be treated as a transfer of capital.

If such contributions are made to a foreign enterprise by its parent company or by another subsidiary of that parent company royalty payments shall not be permitted nor may any deduction be made on that account for tax purposes.

Article 23. By 30 November 1972, on a proposal from the Board, the Commission shall approve a programme designed to promote and safeguard the production of subregional technology and the adaptation and assimilation of existing technologies.

This programme shall provide inter alia for:

(a) special fiscal or other incentives to the production of technology, and in particular of technologies relating to the intensive use of subregional inputs or designed for the efficient utilization of subregional factors of production;

(b) the promotion of exports to third countries of products manufactured on the basis of subregional technology; and

(c) the channelling of domestic savings into the establishment of subregional or national research and development centres.

Article 24. The Governments of member countries shall give preference in their purchases to products incorporating subregional technology in such manner as the Commission may deem appropriate. On a proposal from the Board the Commission may propose to member countries that taxes be levied on products which use foreign trade marks that involve royalty payments where the technology employed in the manufacture of those products is publicly available or readily accessible.

Article 25. Licence agreements for the exploitation of foreign trade marks in the territories of member countries may not contain restrictive stipulations of the following kinds:

(a) stipulations prohibiting or limiting the export to or sale in specific countries of products manufactured under the trade mark in question or of similar products;

(b) stipulations requiring the use of raw materials, intermediate goods and equipment supplied by the owner of the trade mark or his affiliates; in exceptional cases the recipient country may accept stipulations of this kind provided that the price of the articles in question is consonant with current world market prices;

(c) stipulations fixing the sale prices or resale prices of products manufactured under the trade mark concerned;

(d) stipulations requiring the payment of royalties to the owner of a trade mark in respect of unused trade marks;

(e) stipulations requiring the permanent use of staff provided or designated by the owner of the trade mark; and

(f) other stipulations of equivalent effect.

Article 26. On a proposal from the Board the Commission may specify the production processes, products or groups of products in respect of which patent privileges may not be granted in any member country. It may also decide on the treatment of existing privileges.